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TITLE 23

PUBLIC UTILITIES AND REGULATED INDUSTRIES

(CHAPTERS 30-59 IN VOLUME 23A; CHAPTERS 60-73 IN VOLUME 23B; CHAPTERS 74-87 IN VOLUME 24A; CHAPTERS 88-115 IN VOLUME 24B)

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER.

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER 1

GENERAL PROVISIONS

SECTION.

23-1-101. Definitions.

CASE NOTES

ANALYSIS

In General.

The Arkansas Legislature, in enacting § 23-2-304, set forth the powers of the Arkansas Public Utility Commission, but did not limit the Commission's jurisdiction to the powers expressly set out in the public utility statutes; the Commission was vested with the power and jurisdiction, and its duty was, to supervise and regulate every public utility defined in this section and to do all things, whether specifically designated or not, that were necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub.

Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Jurisdiction.

Supreme Court of Arkansas granted a gas utility company's writ of prohibition from a county court's denial of the company's motion to dismiss finding that the Arkansas Public Service Commission (APSC) had sole and exclusive jurisdiction under § 23-4-201(a)(1) over Arkansas residential gas customers' claims that they were being charged too much for natural gas because of the company's alleged fraudulent conduct. Centerpoint Energy, Inc. v. Miller County Circuit Court, 370 Ark. 190, 258 S.W.3d 336 (2007).

Public Utility.

In litigation between landowners and the city over the scope of a utility easement and rights of ingress and egress to service a telecommunications facility, it was irrelevant whether cellular communications businesses were included within the term "public utility" as defined by this section since this definition related only to ratemaking by the Arkansas Public Service Commission. Bishop v. City of Fayetteville, 81 Ark. App. 1, 97 S.W.3d 913 (2003).

23-1-115. Citizens band radio equipment.

(a)(1) Citizens band radio equipment shall not be used unless that equipment is certified by the Federal Communications Commission.

(2) Citizens band radio equipment shall not be operated on a frequency between twenty-four megahertz (24 MHz) and thirty-five megahertz (35 MHz) without authorization from the commission.

(b) Nothing in this section shall be construed to affect any radio station that is licensed by the commission under 47 U.S.C. § 301.

(c)(1) A first violation of this section is a violation punishable by a fine of one hundred dollars ($100).

(2) A second or subsequent violation of this section is a violation punishable by a fine not to exceed one thousand dollars ($1,000).

History. Acts 2001, No. 1432, § 1; 2005, No. 1994, § 145.

CHAPTER 2

REGULATORY COMMISSIONS

SUBCHAPTER.

Subchapter 1 — Arkansas Public Service Commission

SECTION.

A.C.R.C. Notes. Acts 2011, No. 2, § 4, provides: "SALARY LEVELS. The Speaker of the House of Representatives and the Chief of Staff or his designee shall, during the month of June, each fiscal year, meet and determine the actual salaries to be paid each employee beginning the following July 1. Such salaries of

the employees will be based upon an evaluation of the performance of the Chief of Staff by the Speaker of the House of Representatives and upon an evaluation of the performance of the other employees by the Chief of Staff or his designee."

Effective Dates. Acts 2003, No 1321, § 19: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 2003 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2003 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2003."

23-2-103. Offices — Place of hearings and investigations.

CASE NOTES

Public Comments.

Although subsection (b) of this section required the Arkansas Public Service Commission to consider public hearing comments before issuing a decision about a rate increase, its failure to do so was a harmless error when the Commission addressed the comments in a later order and there was no argument that no substantial evidence under § 23-2-423(c)(3) and (4) supported the increase, and therefore, prejudice to the residential ratepayers was not shown. Although the wording of subsection (b) of this section does not state specifically that the Commission must have the transcript of the public comments before it issues its decision, that is clearly the intent of the statute. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

23-2-112. Rural and Community Liaison — General job responsibilities.

(a) The Rural and Community Liaison will serve as a two-way communication link between the Arkansas Public Service Commission and utility customers in Arkansas, particularly those in rural areas.

(b)(1) The liaison is responsible for:

(A) Providing information to communities and rural utility customers concerning utility matters within the jurisdiction of the commission; and

(B) Identifying questions and concerns that rural utility customers may have concerning utility issues and relaying those concerns to the members of the commission and to the commission staff.

(2) In the performance of these duties, the liaison will work with stakeholders in rural areas and communities, including legislators, civic and community leaders, customers and customer groups, and rural utility personnel.

History. Acts 2003, No. 1321, § 14.

Subchapter 3 — General Regulatory Authority of Commissions

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 246, § 2, Feb. 26, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the April date for the submission of the Arkansas Public Service Commission's annual report to the Governor precludes the commission from including full and complete public utility data for the preceding calendar year; that changing the submission date of the annual report from April to June will allow the commission to include in its annual report full and complete public utility data for the preceding calendar year; that this act is immediately necessary because the commission's next annual report is required to be submitted in the month of April 2009. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-2-301. Powers and jurisdiction of commission generally.

CASE NOTES

Scope of Authority.

Surcharge statutes tie surcharges to existing facility costs and costs directly related to legislative or regulatory requirements, and there is no authority granted to the Arkansas Public Service Commission for the implementation of social programs; moreover; the same holds true of sliding-scale ratemaking where the statutory language of this section and Arkansas case law refer to costs associated with gas production and service to

the ratepayers, not low-income assistance programs. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Cited: Brandon v. Arkansas W. Gas Co., 76 Ark. App. 201, 61 S.W.3d 193 (2001); Centerpoint Energy, Inc. v. Miller County Circuit Court, 370 Ark. 190, 258 S.W.3d 336 (2007).

23-2-304. Certain powers of commission enumerated.

(a) Upon complaint or upon its own motion and upon reasonable notice and after a hearing, the Arkansas Public Service Commission shall have the power to:

(1) Find and fix just, reasonable, and sufficient rates to be thereafter observed, enforced, and demanded by any public utility;

(2) Determine the reasonable, safe, adequate, and sufficient service to be observed, furnished, enforced, or employed by any public utility and to fix this service by its order, rule, or regulation;

(3) Ascertain and fix adequate and reasonable standards, classifications, regulations, practices, and services to be furnished, imposed, observed, and followed by any or all public utilities;

(4) Ascertain and fix adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of all products, commodities, or services furnished or rendered by any and all public utilities;

(5) Prescribe reasonable regulations for the examination and testing of the production, commodity, or service, and, for the measurement thereof, establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters or appliances for measurement;

(6) Provide for the examination and testing of any and all appliances used for the measurement of any product, commodity, or service of any public utility;

(7)(A) Ascertain and fix the value of the whole or any part of the property of any public utility insofar as this value is material to the exercise of the jurisdiction of the commission.

(B) The commission may make revaluations of the whole or any part of the property from time to time and may ascertain the value of any new construction, extension, and addition to or retirement from the property of every public utility;

(8)(A) Require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the commission may prescribe.

(B) The commission may ascertain, determine, and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility.

(C) Each public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed by the commission;

(9) Assure that retail customers should have access to safe, reliable, and affordable electricity, including protection against service disconnections in extreme weather or in cases of medical emergency or nonpayment for unrelated services; and

(10)(A) Assure that electric utility bills, usage, and payment records should be treated as confidential unless the retail customer consents to their release or the information is provided only in the aggregate.

(B) Notwithstanding subdivision (a)(10)(A) of this section, release of such information may be made pursuant to subpoena, court order, or other applicable statute, rule, or regulation.

(b) Because of competitive and technological changes relating to the services provided by telephone public utilities, the commission, upon petition by the telephone public utility, after notice and hearing and a finding that it is in the public interest, may deviate from the rate/base rate of return method of regulation in establishing rates and charges for services provided by the telephone public utility.

(c) In the discharge of its duties under this act, the commission may cooperate with regulatory commissions of other states and of the United States. It may also hold joint hearings and make joint investigations with such commissions.

History. Acts 1935, No. 324, §§ 8, 19; Pope's Dig., §§ 2071, 2082; A.S.A. 1947, §§ 73-202, 73-218; Acts 1993, No. 238, § 1; 2003, No. 204, § 6.

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

CASE NOTES

Analysis

In General.
Jurisdiction.
Scope of Authority.

In General.

The amendment of this section by Acts 2003, No. 204, is viewed by the court as recognition of the fact that no such power was previously vested in the Arkansas Public Service Commission for the provision of electricity in inclement weather, and, of course, no such power presently exists relating to natural gas. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Jurisdiction.

The Arkansas Legislature, in enacting this section, set forth the powers of the Arkansas Public Utility Commission, but did not limit the Commission's jurisdiction to the powers expressly set out in the public utility statutes; the Commission was vested with the power and jurisdiction, and its duty was, to supervise and regulate every public utility defined in § 23-1-101 and to do all things, whether specifically designated or not, that were necessary or expedient in the exercise of such power and jurisdiction, or in the discharge of its duty. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Scope of Authority.

Because subdivisions (a)(1) and (2) of this section allowed the Arkansas Public Utility Commission to exercise its legislatively delegated authority to regulate public utilities, fix reasonable and sufficient rates, and determine the reasonable, safe, adequate, and sufficient service to be furnished by the natural gas utilities, its emergency policy, implemented to assist low-income families obtain reconnection, and the temporary interim surcharge associated with it, were not outside the scope of the Commission's authority. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Surcharge statutes tie surcharges to

existing facility costs and costs directly related to legislative or regulatory requirements, and there is no authority granted to the Arkansas Public Service Commission for the implementation of social programs; moreover; the same holds true of sliding-scale ratemaking where the statutory language of this section and Arkansas case law refer to costs associated with gas production and service to the ratepayers, not low-income assistance programs. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Cited: Alltel Ark., Inc. v. Ark. Pub. Serv. Comm'n, 76 Ark. App. 547, 69 S.W.3d 889 (2002).

23-2-315. Reports by commission.

The Arkansas Public Service Commission shall make and submit to the Governor during the month of June of each year a report containing a full and complete account of its transactions and proceedings for the preceding calendar year, together with such other facts, suggestions, and recommendations as it may deem of value to the people of the state.

History. Acts 1935, No. 324, § 14; Pope's Dig., § 2077; A.S.A. 1947, § 73-141; Acts 1989, No. 594, § 1; 2009, No. 246, § 1.

Amendments. The 2009 amendment substituted "Arkansas Public Service Commission" for "commission" and "June" for "April."

Subchapter 4 — Procedure Before Commissions

23-2-403. Evidence and pleading.

CASE NOTES

Analysis

Cross-Examination of Witnesses.
Judicial Review.

Cross-Examination of Witnesses.

Although a utility argued that the Public Service Commission violated constitutional guarantees of due process by limiting the cross-examination of witnesses, the utility waived this argument on appeal by not making a timely objection below. Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n, 104 Ark. App. 147, 289 S.W.3d 513 (2008), review denied, Entergy Ark., Inc. v. Ark. PSC, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 453 (Apr. 23, 2009).

Judicial Review.

Public Service Commission (PSC) did not act err in declaring that an electric utility's recovery of storm restoration costs in the amount of $47 million would constitute improper, retroactive ratemaking, nor did it err in using a hypothetical debt-to-equity (D/E) ratio of 52/48 to establish the cost of capital instead of the utility's 44/56 D/E ratio; however, in calculating the dividends-payable balance, the PSC erred in using the utility's parent company's lag time. Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n, 104 Ark. App. 147, 289 S.W.3d 513 (2008), review denied, Entergy Ark., Inc. v. Ark. PSC, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 453 (Apr. 23, 2009).

23-2-405. Service of process, notices, complaints, etc.

(a) All process issued by the commission shall extend to all parts of the state, and any such process, together with the service of all notices issued by the commission, as well as copies of complaints, rules, orders, and regulations of the commission, may be served by any person authorized to serve process issued out of courts of law, or by mail, as the commission may direct.

(b) In instances in which service is had by mail, a duplicate of the instrument served shall be enclosed, upon which duplicate the person served shall endorse the date of his or her receipt of the original and promptly return the duplicate to the commission.

(c) Any person who fails, neglects, or refuses to promptly return the receipt and duplicate shall be guilty of a Class A misdemeanor.

History. Acts 1935, No. 324, § 29; Pope's Dig., § 2092; A.S.A. 1947, § 73-228; Acts 2005, No. 1994, § 203.

23-2-408. Subpoenas duces tecum.

CASE NOTES

Jurisdiction.

Supreme Court of Arkansas granted a gas utility company's writ of prohibition from a county court's denial of the company's motion to dismiss finding that the Arkansas Public Service Commission (APSC) had sole and exclusive jurisdiction under § 23-4-201(a)(1) over Arkansas residential gas customers' claims that they were being charged too much for natural gas because of the company's alleged fraudulent conduct. Centerpoint Energy, Inc. v. Miller County Circuit Court, 370 Ark. 190, 258 S.W.3d 336 (2007).

23-2-409. Subpoenas — Failure to comply — Penalty.

The failure or refusal of any witness to appear or to produce any books, papers, or documents required by the Arkansas Public Service Commission or the Arkansas Transportation Commission [abolished] and to submit them to the inspection of the commission or the refusal to answer any questions propounded by the commission shall constitute a violation punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500).

History. Acts 1945, No. 40, § 2; A.S.A. 1947, § 73-130; Acts 2005, No. 1994, § 146.

23-2-421. Findings and orders of Arkansas Public Service Commission.

CASE NOTES

Findings of Fact.

It was not required that the Public Utility Commission make findings of fact on all items of evidence or issues nor answer each and every contention raised by the parties; thus, where the evidence that supported order 2, which was issued after public notice, comment, and a hearing, equally supported orders 3 and 4, which simply corrected and clarified order 2, additional findings were not necessary. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

In a proceeding to increase nongas rates, whether the month of April should have been included in the winter (peak) usage period that was relied on by the Arkansas Public Service Commission to support the 68.5% demand allocation was a finding that should have been made by the Commission and because the decision was insufficient for the court to make an adequate meaningful review as required by subsection (a) of this section, the action was remanded. The issue was properly before the Commission. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

23-2-422. Arkansas Public Service Commission orders — Rehearings.

CASE NOTES

Analysis

Due Process.
Rehearings.

Due Process.

In an action to increase nongas rates, the brevity of time in which the Arkansas Public Service Commission approved a gas company's tariffs did not violate a consumer group's due process rights because the group was not deprived of the opportunity to petition for rehearing under subsection (a) of this section. The group did not identify any property right before the Commission or the court of which it had been deprived, and it did not show any prejudice. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

Rehearings.

Notice of appeal may be filed within thirty days of one of two dates: (1) the date on which the Arkansas Public Service Commission (PSC) enters an order upon the application for rehearing, or (2) the date on which the application is deemed denied, and Ark. R. App. P. Civ. 4 does not apply; therefore, a motion to dismiss an appeal as untimely was denied because it was filed within 30 days of the PSC denying rehearing, even though the deemed denied date had already passed when the PSC decided to reconsider the case. Commercial Energy Users Group v. Arkansas Pub. Serv. Comm'n, 369 Ark. App. 13, 250 S.W.3d 225 (2007).

23-2-423. Arkansas Public Service Commission orders — Judicial review — Procedure.

CASE NOTES

Analysis

Notice of Appeal.
Scope of Review.
—Substantial Evidence.
Waiver of Objections.

Notice of Appeal.

Notice of appeal may be filed within thirty days of one of two dates: (1) the date on which the Arkansas Public Service Commission (PSC) enters an order upon the application for rehearing, or (2) the date on which the application is deemed denied, and Ark. R. App. P. Civ. 4 does not apply; therefore, a motion to dismiss an appeal as untimely was denied because it was filed within 30 days of the PSC denying rehearing, even though the deemed denied date had already passed when the PSC decided to reconsider the case. Commercial Energy Users Group v. Arkansas Pub. Serv. Comm'n, 369 Ark. App. 13, 250 S.W.3d 225 (2007).

Scope of Review.

Although § 23-2-103(b) required the Arkansas Public Service Commission to consider public hearing comments before issuing a decision about a rate increase, its failure to do so was a harmless error when the Commission addressed the comments in a later order and there was no argument that no substantial evidence under subdivisions (c)(3) and (4) of this section supported the increase, and therefore, prejudice to the residential ratepayers was not shown. Although the wording of § 23-2-103(b) does not state specifically that the Commission must have the transcript of the public comments before it issues its decision, that is clearly the intent of the statute. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

In an action to increase nongas rates, the Consumer Utilities Rate Advocacy Division of the Attorney General's Office obtained some testimony that the allocation of distribution mains' cost could have been lowered if relevant data was available, but that evidence was not sufficient to convince the court that the Arkansas Public Service Commission's adoption of its staff's customer allocation was not supported by substantial evidence as required by subdivisions (c)(3) and (4) of this section. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

In an action to increase nongas rates, the Arkansas Public Service Commission found that a gas company met its burden of producing sufficient evidence of real potential harm for abuse of the company's system and a consumer group did not demonstrate that the potential for abuse did not exist or offer evidence that the proposal was unreasonable. Therefore, under subsection (c) of this section, substantial evidence supported the Commission's decision to allow the company to lower the imbalance percentages. Consumers Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 99 Ark. App. 228, 258 S.W.3d 758 (2007).

Public Service Commission (PSC) did not act err in declaring that an electric utility's recovery of storm restoration costs in the amount of $47 million would constitute improper, retroactive ratemaking, nor did it err in using a hypothetical debt-to-equity (D/E) ratio of 52/48 to establish the cost of capital instead of the utility's 44/56 D/E ratio; however, in calculating the dividends-payable balance, the PSC erred in using the utility's parent company's lag time. Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n, 104 Ark. App. 147, 289 S.W.3d 513 (2008), review denied, Entergy Ark., Inc. v. Ark. PSC, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 453 (Apr. 23, 2009).

—Substantial Evidence.

Though subdivision (c)(4) of this section limited judicial review of appeals from the Arkansas Public Service Commission, because the order of the Commission was supported by substantial evidence and was not unjust, arbitrary, unreasonable, unlawful, or discriminatory, the appeals court affirmed the Commission's action. Ark. Gas Consumers, Inc. v. Ark. Pub.

Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Waiver of Objections.

Although a utility argued that the Public Service Commission violated constitutional guarantees of due process by limiting the cross-examination of witnesses, the utility waived this argument on appeal by not making a timely objection below. Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n, 104 Ark. App. 147, 289 S.W.3d 513 (2008), review denied, Entergy Ark., Inc. v. Ark. PSC, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 453 (Apr. 23, 2009).

Cited: Alltel Ark., Inc. v. Ark. Pub. Serv. Comm'n, 76 Ark. App. 547, 69 S.W.3d 889 (2002); Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003); Hempstead County Hunting Club, Inc. v. Ark. PSC, 2010 Ark. 221, — S.W.3d — (2010).

23-2-424. Arkansas Public Service Commission orders — Rehearing or judicial review — Effect on order, stocks, etc.

CASE NOTES

Stay Pending Review.

Notice of appeal may be filed within thirty days of one of two dates: (1) the date on which the Arkansas Public Service Commission (PSC) enters an order upon the application for rehearing, or (2) the date on which the application is deemed denied, and Ark. R. App. P. Civ. 4 does not apply; therefore, a motion to dismiss an appeal as untimely was denied because it was filed within 30 days of the PSC denying rehearing, even though the deemed denied date had already passed when the PSC decided to reconsider the case. Commercial Energy Users Group v. Arkansas Pub. Serv. Comm'n, 369 Ark. App. 13, 250 S.W.3d 225 (2007).

CHAPTER 3

REGULATION OF UTILITIES AND CARRIERS GENERALLY

SUBCHAPTER.

1. General Provisions.
2. Certificates of Convenience and Necessity.
3. Merger or Acquisition of Control of Domestic Public Utilities.
5. Navigable Water Crossings.
6. Gas Utilities — Extension Projects.

Subchapter 1 — General Provisions

SECTION.

23-3-102. Consolidations, stock purchases in another utility, or rentals of additional property.

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act

is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-3-101. Organization or reorganization.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-3-102. Consolidations, stock purchases in another utility, or rentals of additional property.

(a) With the consent and approval of the Arkansas Public Service Commission, but not otherwise:

(1) Any two (2) or more public utilities may consolidate with each other;

(2) Any public utility may acquire the stock or any part thereof of any other public utility; and

(3) Any public utility may sell, acquire, lease, or rent any public utility plant or property constituting an operating unit or system.

(b)(1) Application for the approval and consent of the commission shall be made by the interested public utility and shall contain a concise statement of the proposed action, the reasons therefor, and such other information as may be required by the commission.

(2) Upon the filing of an application, the commission shall investigate it, with or without public hearing, and in case of a public hearing, upon such notice as the commission may require. If it finds that the proposed action is consistent with the public interest, it shall give its consent and approval in writing.

(3) In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, equipment, or securities of the utility to be acquired or merged.

(c) No public utility shall sell, lease, rent, or otherwise transfer, in any manner, control of electric transmission facilities in this state without the approval of the commission, provided that the approval is required only to the extent the transaction is not subject to the exclusive jurisdiction of the Federal Energy Regulatory Commission or any other federal agency.

(d) Any transaction required by this section to be submitted to the commission for its consent and approval shall be void unless the commission shall give its consent and approval thereto in writing.

(e)(1) All transactions among or between a regulated electric public utility and any of its divisions, components, or affiliates that are not regulated by the commission shall be subject to such rules as may be promulgated by the commission so that:

(A) All such transactions that involve regulated services shall be subject to the rates, terms, and conditions specified in tariffs approved by the commission; and

(B) An electric utility shall not use any revenue from any regulated asset, operation, or service to subsidize the provision of any unregulated electric service or any other unregulated activity.

(2) However, the provisions of this subsection shall not apply to any transactions involving an electric cooperative formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq., in which:

(A) The membership of such a cooperative approves the transaction; and

(B) In the case of subdivision (e)(1)(B) of this section, the commission has not disallowed the transaction within sixty (60) days after the filing of a notice with the commission in writing of the proposed transaction by the cooperative.

History. Acts 1935, No. 324, § 57; Pope's Dig., § 2117; A.S.A. 1947, § 73-253; Acts 2003, No. 204, § 7.

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

23-3-108. Domestication of foreign railroad, pipeline, or electric light and power corporations.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Property Law, 24 U. Ark. Little Rock L. Rev. 549.

23-3-109. Annual statements of gross earnings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-3-110. Annual fees generally.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23 and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-3-113. Adequate service, facilities, etc., to be provided.

CASE NOTES

Particular Circumstances.

District court properly granted summary judgment to a power company in an action resulting from the death of two men who were electrocuted when an aluminum tent pole came in contact with a power line because the evidence did not show that the company knew or should have known about the risk of an accident like the one which killed the men. Koch v. Southwestern Elec. Power Co., 544 F.3d 906 (8th Cir. 2008).

23-3-114. Unreasonable preferences prohibited.

CASE NOTES

Rate Differences.

In accord with first paragraph in bound volume. Bryant v. Ark Pub. Serv. Comm'n, 50 Ark. App. 213, 907 S.W.2d 140 (1995).

In light of the undisputed public health and safety emergency that prompted the Arkansas Public Service Commission implementation of an emergency policy to assist low-income families obtain reconnection of their utilities, the policy's temporary advantage to a class of low-income customers was reasonable under the circumstances. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Although the Attorney general's office argued that Arkansas Public Service Commission's approval of an agreement to a gas company's rate hike was unreasonable and discriminatory, substantial evidence, including witness testimony, supported the Commission's decision to approve the agreement. Consumer Utils. Rate Advocacy Div. v. Ark. Pub. Serv. Comm'n, 86 Ark. App. 254, 184 S.W.3d 36 (2004).

23-3-118. Rates, charges, or service — Investigations.

CASE NOTES

Cited: Brandon v. Arkansas W. Gas Co., 76 Ark. App. 201, 61 S.W.3d 193 (2001).

23-3-119. Complaints.

CASE NOTES

Analysis

Jurisdiction.
Review.

Jurisdiction.

In customer's class action suit against a public service commission and several gas utilities challenging surcharges she paid as a result of an illegal policy implemented by the commission regarding low-income assistance, the trial court properly dismissed customer's claims as the relief she was seeking was a refund, which was within the jurisdiction of the commission to resolve under subsection (d) of this section; contrary to customer's assertion, the surcharges were not a tax but a mechanism by which the utilities could recover some of the bad debt incurred as a result of the implementation of the policy in question. Austin v. Centerpoint Energy Arkla, 365 Ark. 138, 226 S.W.3d 814 (2006).

Supreme Court of Arkansas granted a gas utility company's writ of prohibition from a county court's denial of the company's motion to dismiss finding that the Arkansas Public Service Commission (APSC) had sole and exclusive jurisdiction under § 23-4-201(a)(1) over Arkansas residential gas customers' claims that they were being charged too much for natural gas because of the company's alleged fraudulent conduct. Centerpoint Energy, Inc. v. Miller County Circuit Court, 370 Ark. 190, 258 S.W.3d 336 (2007).

Because the circuit court's refusal to dismiss the representative of the Arkansas consumers was not in compliance with the court's prior decision ruling, which determined that the Arkansas Public Service Commission had sole and exclusive jurisdiction over the claims as they related to the Arkansas customers, the court granted a writ of mandamus and directed the circuit court to dismiss the representative of the Arkansas consumers; the jurisdiction of the Arkansas Public Service Commission in rate disputes was primary and had to be exhausted before a court of law or equity could assume jurisdiction. Centerpoint Energy, Inc. v. Miller County Circuit Court, 372 Ark. 343, 276 S.W.3d 231 (2008).

When an electric cooperative's customers alleged the utility failed to refund patronage capital to the customers, the customers' claims were properly dismissed due to the customers' failure to seek relief from the Arkansas Public Service Commission (APSC) because (1) it was alleged that the cooperative violated a duty to pay capital credits "on a reasonable and systematic basis," (2) the main relief sought was a refund of those credits, (3) the APSC had primary jurisdiction over claims that the cooperative violated § 23-18-327 and was authorized by subsection (d) of this section to order appropriate prospective relief, and (4) the customers' claims were not private damage claims based on tort, contract, or property law. Capps v. Carroll Elec. Coop. Corp., 2011 Ark. 48, — S.W.3d — (2011).

When an electric cooperative's customers who were Missouri residents alleged the utility failed to refund patronage capital to the customers, the customers' claims were properly dismissed due to the customers' failure to seek relief from the Arkansas Public Service Commission (APSC) because (1) the customers did not allege a claim under Missouri law, and (2) the claims were based on an alleged failure of the cooperative to comply with Arkansas law, specifically § 23-18-327. Capps v. Carroll Elec. Coop. Corp., 2011 Ark. 48, — S.W.3d — (2011).

Review.

Under this section, a hunting club was required to first bring a complaint for declaratory and prospective relief before the Arkansas Public Service Commission (PSC), and to exhaust all of its administrative remedies before the PSC prior to seeking judicial relief. Hempstead County Hunting Club v. Southwestern Elec. Power Co., 2011 Ark. 234, — S.W.3d — (2011).

Cited: Brandon v. Arkansas W. Gas Co., 76 Ark. App. 201, 61 S.W.3d 193 (2001).

23-3-120. Definition.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Property Law, 24 U. Ark. Little Rock L. Rev. 549.

Subchapter 2 — Certificates of Convenience and Necessity

SECTION.

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 910, § 13: Apr. 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that recent decisions by the Arkansas Court of Appeals and the Arkansas Supreme Court have pointed out the need for the General Assembly to clarify its intentions regarding the certification and authorization of the location, financing, construction, and operation of major utility facilities; and that this act is immediately necessary to provide for the continued economic development of the state and the orderly and efficient development of essential energy resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the

Governor and the veto is overridden, the date the last house overrides the veto."

23-3-201. Requirement for new construction or extension.

(a) New construction or operation of equipment or facilities for supplying a public service or the extension of a public service shall not be undertaken without first obtaining from the Arkansas Public Service Commission a certificate that public convenience and necessity require or will require the construction or operation.

(b) This section does not require a certificate of public convenience and necessity for:

(1) The replacement or expansion of existing equipment or facilities with similar equipment or facilities in substantially the same location or the rebuilding, upgrading, modernizing, or reconstructing of equipment or facilities that increase capacity if no increase in the width of an existing right-of-way is required;

(2) The construction or operation of equipment or facilities for supplying a public service that has begun under a limited or conditional certificate or authority as provided in §§ 23-3-203 — 23-3-205;

(3) The extension of a public service:

(A) Within a municipality or district where a public service has been lawfully supplied;

(B) Within or to territory then being served; or

(C) That is necessary in the ordinary course; or

(4) Except as provided in § 23-18-504(c), the construction or operation of a major utility facility as defined in the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., or any exemption under the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq.

History. Acts 1935, No. 324, § 41; Pope's Dig., § 2104; Acts 1957, No. 103, § 3; 1967, No. 234, § 5; A.S.A. 1947, § 73-240; Acts 1999, No. 1556, § 6; 2001, No. 324, § 1; 2003, No. 204, § 8; 2007, No. 468, § 1; 2009, No. 164, § 1; 2011, No. 910, § 12.

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment added the (a)(1) designation and added (a)(2).

The 2009 amendment rewrote the section.

The 2011 amendment added (b)(4).

Subchapter 3 — Merger or Acquisition of Control of Domestic Public Utilities

SECTION.

23-3-304. Penalties.

(a) Any person who knowingly does or causes to be done any act, matter, or thing prohibited or declared to be unlawful by this subchapter, or who knowingly omits or fails to do any act, matter, or thing required by this subchapter, or knowingly causes such an omission or failure, shall be punished upon conviction thereof by a fine of not more than five thousand dollars ($5,000) or by imprisonment for not more than two (2) years, or both. In addition, the violation shall be punishable upon conviction by a fine not exceeding five hundred dollars ($500) for each day during which the offense occurs.

(b) Any person who knowingly violates any rule, regulation, restriction, condition, or order made or imposed by the Arkansas Public Service Commission under authority of this subchapter shall be guilty of a violation and, in addition to any other penalties provided by law, shall be punished upon conviction by a fine not exceeding five hundred dollars ($500) for each day during which such an offense occurs.

(c) In addition, should any person consummate, by whatever means, the acquisition of any of the voting securities of a domestic public utility in violation of this subchapter, the commission upon finding that one (1) or more of the conditions set forth in § 23-3-310 exist or will exist by virtue of the acquisition, may order the immediate divestiture of so much of the voting securities held by that person as, in the commission's opinion, is necessary to remove the domestic public utility from the control of that person.

History. Acts 1985, No. 343, § 11; A.S.A. 1947, § 73-142.11; Acts 2005, No. 1994, § 454.

23-3-316. Injunctions — Criminal proceedings.

(a) Whenever it shall appear to the Arkansas Public Service Commission, the Attorney General, or a domestic public utility which reasonably believes itself to be the object of a tender offer or attempt to obtain control as described in § 23-3-306, that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule, regulation, or order thereunder, the commission, the Attorney General, or the domestic public utility may bring an action in Pulaski County Circuit Court to enjoin those acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order thereunder. Upon a proper showing being made, a temporary restraining order, preliminary injunction, or permanent injunction enjoining any such person and all others acting on behalf of or at the discretion of that person shall be granted without bond.

(b) The commission, the Attorney General, and the domestic public utility shall transmit any evidence which may be available concerning those acts or practices or concerning apparent violations of this sub-

chapter to the prosecuting attorney for Pulaski County who, in his or her discretion, may institute appropriate criminal proceedings.

History. Acts 1985, No. 343, § 10; A.S.A. 1947, § 73-142.10.

Publisher's Notes. This section is being set out to reflect a correction in (a).

Subchapter 4 — Energy Conservation Endorsement Act of 1977

Publisher's Notes. Acts 2005, No. 1939, § 1 provided: "Energy conservation report.

"(a) On or before September 30, 2006, the Arkansas Public Service Commission shall prepare a report for the General Assembly of the State of Arkansas concerning its activities under the Energy Conservation Endorsement Act of 1977, § 23-3-401 et seq., for the period of July 1, 1998, through June 30, 2006.

"(b) The report shall include:

"(1) A description and analysis of the commission's efforts to engage in energy conservation programs and measures as defined in § 23-3-403;

"(2) A summary of the commission's efforts to encourage public utility compliance with § 23-3-404;

"(3) A description of any commission-ordered energy conservation program or measure that has caused a commission-regulated utility to incur additional costs of service or investments to conserve electricity, natural gas, oil, or other fuels;

"(4) A description of any increases in rates or charges resulting from an energy conservation program or measure approved and ordered into effect by the commission under § 23-3-405(a)(3); and

"(5) Any recommendations about the Energy Conservation Endorsement Act of 1977 that the commission may want to offer for the General Assembly's consideration."

Subchapter 5 — Navigable Water Crossings

SECTION.

23-3-504. Petition regarding operation.

Pursuant to the authority granted in this subchapter, the Arkansas Public Service Commission shall require any river crossing proprietor operating or proposing to operate a navigable water crossing to file a verified petition with the commission showing such data and specifications in relation thereto as the commission may reasonably prescribe. The petition may include the following:

(1) The name of the river crossing proprietor and the nature of its organization and the nature of its business;

(2) The river crossing proprietor's principal office and place of business;

(3) A map, based upon a ground survey, showing the location of the public service facility at the point of the existing or proposed navigable water crossing, a drawing showing in some detail the specifications of the proposed crossing, and a profile plat showing, with respect to the mean surface level and the bed of the navigable waterway, the elevations of the existing or proposed public service facility;

(4) A general description of the physical nature of the bed underlying the navigable waterway at the point of the existing or proposed navigable water crossing, if the crossing is to be constructed on the underlying bed;

(5) A description of materials and the type of construction employed or to be employed in effecting the navigable water crossing;

(6) The size, capacity, and purpose of the public service facilities at the point of the navigable water crossing, together with operating conditions and safety factors;

(7) A showing of approval or permissive authorization of the existing or proposed navigable water crossing by the Secretary of Defense or the Secretary of the Army of the United States or other federal agency having jurisdiction to consent to erections in navigable waterways; and

(8) A prayer that the legality of the existing or proposed navigable water crossing be recognized pursuant to this subchapter.

History. Acts 1961, No. 188, § 3; A.S.A. 1947, § 73-2203.
Publisher's Notes. This section is being set out to reflect a formatting correction in (3).

Subchapter 6 — Gas Utilities — Extension Projects

SECTION.
23-3-603. Grant of certificate generally.

23-3-603. Grant of certificate generally.

The Arkansas Public Service Commission shall grant a certificate if it finds that the proposed extension project is of economic benefit to the gas utility and is in the public interest. Within the body of the order, the commission shall apportion the future recovery of the cost of the excess expenditures between the surcharge and cost-of-service recovery, in whatever proportions or percentages the commission finds reasonable, from zero to one hundred percent (0 — 100%), inclusive. Once the certificate has been granted, including the approval of the amount and allocation of rates and surcharges, the gas utility may begin construction and may expend funds on the certificated extension project.

History. Acts 1987, No. 150, § 3.
Publisher's Notes. This section is being set out to reflect a correction in the second sentence.

CHAPTER 4

REGULATION OF RATES AND CHARGES GENERALLY

SUBCHAPTER.
1. General Provisions.
2. Utilities Generally.
6. Railroads and Other Carriers Generally.
7. Railroads and Express Companies — Establishing Rates.
8. Railroads and Transportation Companies — Passes and Free Transportation.

SUBCHAPTER 1 — GENERAL PROVISIONS

Effective Dates. Acts 2007, No. 647, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the rates paid by customers of public utilities may be affected in a manner that is burdensome to Arkansas utility consumers and harmful to economic development and that the Arkansas Public Service Commission needs to be immediately authorized to employ counsel and experts to protect the utility consumers or Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2009, No. 434, § 2: Mar. 18, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that due to the severe ice storm that struck portions of the state on January 27 and 28, 2009, some of the electric public utilities operating in Arkansas have incurred significant costs in restoring electric service; that electric utility service is essential to the public health and welfare for the preservation of food supplies, heating and cooling of buildings, and operation of commerce that public electric utilities must have financial resources on hand to purchase replacement equipment and to field repair crews swiftly in order to accomplish the prompt restoration of electric service; and that this act is immediately necessary to provide public electric utilities the financial resources necessary to restore service in a timely manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-4-101. Authority of commissions to establish rates — Exceptions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

CASE NOTES

Cited: Alltel Ark., Inc. v. Ark. Pub. Serv. Comm'n, 76 Ark. App. 547, 69 S.W.3d 889 (2002).

23-4-102. Commission's authority over interstate rates, charges, classifications, and other actions.

(a) The Arkansas Public Service Commission shall have the power to investigate all existing or proposed interstate rates, charges, and classifications, and all rules and practices in relation thereto promulgated and prescribed by or for any public utility as defined in § 23-1-101, when the matters so investigated shall affect the public of this state.

(b) When the existing or proposed interstate rates, charges, and classifications are in the opinion of the Arkansas Public Service Commission excessive or discriminatory or in violation of any act of Congress or in conflict with the rules, orders, or regulations of a commission created by Congress, the Arkansas Public Service Commission may seek relief in the appropriate commission or in a court of competent jurisdiction.

(c) For the purpose of this section, the Arkansas Public Service Commission:

(1) Is exempt from the provisions of § 25-16-702 whenever the Arkansas Public Service Commission is a party to a proceeding under subsection (b) of this section;

(2) May retain contract attorneys or contract consultants; and

(3)(A) May adopt rules for direct recovery of the fees and expenses of contract attorneys and consultants from the affected utility under this section, provided that the utility is an electric public utility that is owned by a public utility holding company as defined by section 1262 of the Energy Policy Act of 2005, Pub. L. No. 109-58. The maximum amount that may be directly recovered from an affected utility shall be three million dollars ($3,000,000) annually.

(B)(i) In the event the Arkansas Public Service Commission directly recovers the fees and expenses of its attorneys and consultants from an affected utility under this section, that utility shall be allowed to implement a surcharge mechanism to recover only the expenses directly recovered from that utility.

(ii) The surcharge shall be established annually to recover only the amounts directly recovered from that utility during the preceding calendar year.

(iii) The surcharge mechanism shall include provisions to address any excessive or deficient recoveries during the preceding calendar

year. The surcharge shall not include any interest or carrying charges.

(iv) Any surcharge must be approved by the Arkansas Public Service Commission before it can be implemented.

History. Acts 1935, No. 324, § 9; Pope's Dig., § 2072; A.S.A. 1947, § 73-203; Acts 2007, No. 647, § 1.

Amendments. The 2007 amendment deleted "and" preceding "classifications" and added "and other actions" in the section heading; substituted "Arkansas Public Service Commission" for "commission" in (a); rewrote (b); and added (c).

U.S. Code. Section 1262 of the Energy Policy Act of 2005, Pub. L. No. 109-58, is compiled as 42 U.S.C. § 16451.

23-4-103. Rates, rules, and regulations to be reasonable.

Cross References. Ratemaking policies for cost of acquisition or construction of incremental resources, § 23-18-107.

CASE NOTES

Analysis

Emergency Rates.
Standard of Review.

Emergency Rates.

The Arkansas Public Service Commission emergency policy to assist low-income families obtain reconnection of their utilities did not cover all of the bad debt attributable to customers, but only to those customers who enrolled in the policy and the surcharge was of limited duration, thus, it seemed unlikely that double recovery of the utilities bad debt expenses would occur. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Standard of Review.

Pursuant to the Arkansas Public Service Commission's approval of the sale of an existing telecommunications utility's assets to a new telecommunications utility, where the record was not developed sufficiently for the appellate court to decide the issue of whether the application of PSC's parity order resulted in just and reasonable intrastate switched-access rates, a remand was required. Alltel Ark., Inc. v. Ark. Pub. Serv. Comm'n, 76 Ark. App. 547, 69 S.W.3d 889 (2002).

23-4-108. Sliding scales of rates.

CASE NOTES

In General.

Surcharge statutes tie surcharges to existing facility costs and costs directly related to legislative or regulatory requirements, and there is no authority granted to the Arkansas Public Service Commission for the implementation of social programs; moreover; the same holds true of sliding-scale ratemaking where the statutory language of this section and Arkansas case law refer to costs associated with gas production and service to the ratepayers, not low-income assistance programs. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Cited: Alltel Ark., Inc. v. Ark. Pub. Serv. Comm'n, 76 Ark. App. 547, 69 S.W.3d 889 (2002).

23-4-111. Valuation of public utility property for ratemaking purposes.

(a) As used in this section:

(1)(A) "Public utility" means a public utility as that term is defined under § 23-1-101.

(B) However, "public utility" does not mean an incumbent local exchange carrier that has elected to be regulated under §§ 23-17-406 — 23-17-408 or § 23-17-412;

(2) "Original cost" means the cost incurred by a public utility when plant or property was first devoted to public service; and

(3) "Net book value" means the original cost less reasonable accumulated depreciation of the plant or property.

(b)(1) In determining the value of plant or property that is to be included in the rate base upon which the public utility will be allowed the opportunity to earn a return, the Arkansas Public Service Commission shall use the net book value of the plant or property unless the commission determines that an adjustment is appropriate under subsections (c), (d), or (e) of this section.

(2) However, for affiliate acquisitions, the value of plant or property that is to be included in the rate base upon which the public utility will be allowed the opportunity to earn a return, the commission shall use the net book value of the plant or property or a lesser amount, but in no event may the commission make an adjustment above net book value under subsection (c) of this section.

(3) If the original cost of the plant or property is unknown, the commission shall estimate the net book value.

(c) For plant or property acquired for an amount above net book value, the commission may allow the recovery through rates of an amount greater than net book value but not more than actual cost if the public utility can prove by a preponderance of the evidence that:

(1) The original cost of the plant or property was reasonable and prudent; and

(2) The public utility's customers will receive known and measurable benefits that are at least equal to the incremental amount for which the utility seeks recovery under this subsection.

(d) For plant or property acquired for an amount below net book value, the commission may allow the recovery through rates of an amount greater than the cost of acquisition but not more than the net book value if the public utility can prove by a preponderance of the evidence that:

(1) The original cost of the plant or property was reasonable and prudent; and

(2) The public utility's customers will receive known and measurable benefits that are at least equal to the incremental amount for which the utility seeks recovery under this subsection.

(e) The commission may allow the recovery through rates of an amount less than net book value if the commission determines that the

original cost of the plant or property was not reasonable or was imprudent.

(f) However, for plant or property costs incurred in compliance with § 23-18-106(a), the public utility shall have a rebuttable presumption of reasonableness and prudence for the purpose of the commission's determinations in subsections (c)-(e) of this section.

History. Acts 2003, No. 1317, § 1.

23-4-112. Reserve accounting for storm restoration costs.

(a) This section applies to storm restoration costs incurred on or after January 1, 2009.

(b) Upon application by an electric public utility and after notice and hearing, the Arkansas Public Service Commission shall permit an electric public utility to establish a storm cost reserve account consistent with the then-current Federal Energy Regulatory Commission Uniform System of Accounts, as modified to allow a debit balance to reflect the excess of storm restoration costs over the amount recovered in rates or otherwise credited to the storm cost reserve account.

(c) The use of reserve accounting under this section is subject to the following:

(1)(A) The initial amount included in the storm cost reserve account for an electric public utility shall be the amount included in the electric public utility's currently approved rates for storm restoration costs.

(B) Thereafter, in future rate proceedings, the commission shall determine the appropriate level of the storm cost reserve account considering the electric public utility's historical costs associated with normal storm damage and other factors;

(2) As a condition of an electric public utility's recovery of storm restoration costs through rates or inclusion of storm restoration costs in the storm cost reserve account, the commission shall audit, analyze, examine, and adjust all storm restoration costs to ensure that only reasonable and prudent storm restoration costs are included in the storm cost reserve account or are recoverable through rates;

(3) Simple interest on any balance, credit, or debit in the storm cost reserve account shall accrue at a rate equal to the electric public utility's last approved rate-base rate of return;

(4)(A) An electric public utility shall only charge operations and maintenance storm restoration costs that are not otherwise recovered against the balance in the storm cost reserve account.

(B) The commission shall ensure that the storm restoration costs charged to the storm cost reserve account are:

(i) Timely;

(ii) Specific to restoring retail electric service in Arkansas; and

(iii) Subject to any ratemaking adjustments of the types of expenses included in the storm restoration costs that are consistent with the determination in the electric public utility's most recent application for a general change in rates.

(C) An electric public utility shall:

(i) File a quarterly report with the commission identifying each instance in which the electric public utility records storm restoration costs in the storm cost reserve account; and

(ii) Provide with the quarterly report required by this subdivision (b)(4)(C) supporting documentation prescribed by the commission that includes without limitation:

(a) Vegetation management spending; and

(b) Labor costs;

(5)(A) If an electric public utility spends less on storm restoration costs than the amount included in the electric public utility's currently approved rates for storm restoration costs in any calendar year, the electric public utility shall credit to the storm cost reserve account any difference between the amount in rates and the amount actually spent on storm restoration costs during that calendar year.

(B) If an electric public utility has received any of the following payments to offset storm restoration costs, the electric public utility shall credit those payments to the storm cost reserve account:

(i) Insurance payments;

(ii) Payments from a governmental entity; or

(iii) Any other third-party payments; and

(6)(A) The commission shall determine the following in the electric public utility's next application for a general change in rates:

(i) The recovery of any debit balance in the electric public utility's storm cost reserve account through the electric public utility's rates and charges over a reasonable period; or

(ii) The appropriate ratemaking treatment of any credit balance in the electric public utility's storm cost reserve account.

(B) After notice and hearing and a finding that it is in the public interest, the commission may approve other ratemaking treatment otherwise allowed by law of any balance, credit, or debit in the electric public utility's storm cost reserve account.

(C) The commission shall establish the method of recovery of a debit balance in the electric public utility's storm cost reserve account and may impose conditions to ensure that amounts recovered through rates are reasonable and prudent.

(d) This section:

(1) Does not prevent the commission from adjusting an electric public utility's rate of return associated with the increased certainty of recovery of the electric public utility's storm restoration costs as a result of establishing a storm cost reserve account under this section; and

(2) Does not prevent an electric utility from petitioning the commission to approve other methods of addressing storm restoration costs and the recovery of storm restoration costs through rates as allowed by law.

History. Acts 2009, No. 434, § 1.

Subchapter 2 — Utilities Generally

SECTION.
23-4-209. Transition costs.

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-4-201. Electric, gas, telephone, or sewer utilities — Rate-making authority.

CASE NOTES

Commission's Jurisdiction.

Supreme Court of Arkansas granted a gas utility company's writ of prohibition from a county court's denial of the company's motion to dismiss finding that the Arkansas Public Service Commission (APSC) had sole and exclusive jurisdiction under subdivision (a)(1) of this section over Arkansas residential gas customers' claims that they were being charged too much for natural gas because of the company's alleged fraudulent conduct. Centerpoint Energy, Inc. v. Miller County Circuit Court, 370 Ark. 190, 258 S.W.3d 336 (2007).

23-4-209. Transition costs.

(a)(1) As used in this section, "transition costs" means those costs, investments, or unfunded mandates, either recurring or nonrecurring, incurred by an electric utility after July 30, 1999, that are found to have been necessary to carry out the electric utility's responsibilities associated with efforts to implement retail open access or were mandated by statute or regulation and are not otherwise recoverable.

(2) In no event shall transition costs include retirement or severance programs, marketing or promotional activities, professional or advisory services, or legal costs associated with any competitive strategy.

(3) In no event shall costs that are allowable in the utility's regulated cost of service and rates be included as transition costs, and the electric utility shall be required to demonstrate that its requested transition cost recovery does not contain amounts that are otherwise reflected in current rate levels.

(4) Additionally, no electric utility shall recover transition costs unless approved by the Arkansas Public Service Commission pursuant to this chapter.

(b)(1) An electric utility shall be allowed to recover transition costs incurred no later than January 1, 2002, as may be determined by the commission after notice and hearing.

(2) The recovery shall be by a customer transition charge during a period of time ending thirty-six (36) months after February 21, 2003.

(3) The customer transition charges shall be subject to annual review by the commission. Costs included in the charges shall be prudent, reasonable, and directly caused by Acts 1999, No. 1556, and rules and orders adopted by the commission to implement that act.

(c) An electric utility shall have a right to recover from its customers any nuclear decommissioning costs, as determined by the commission, associated with the utility's generating assets. The commission shall retain jurisdiction sufficient to authorize the recovery of those costs.

History. Acts 2003, No. 204, § 9.

A.C.R.C. Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Subchapter 3 — Consumer Utilities Rate Advocacy Division

23-4-305. Powers and duties.

CASE NOTES

Settlement Agreement.

Where the Arkansas Attorney General represented the state and all classes of utility ratepayers in administrative proceeding, a settlement the Attorney General entered into in the proceeding barred by the doctrine res judicata a later administrative proceeding commenced by ratepayers; the Attorney General had represented the ratepayers' interest in the first administrative proceeding. Brandon v. Arkansas W. Gas Co., 76 Ark. App. 201, 61 S.W.3d 193 (2001).

Subchapter 4 — Utilities — Rate Changes and Surcharges Generally

23-4-406. Test periods to justify new rates.

CASE NOTES

Emergency Policies.

The Arkansas Public Service Commission's implementation of an emergency policy to assist low-income families obtain reconnection of their utilities did not constitute an unlawful single-issue ratemaking in violation of this section because it only applied to general rate increases or charges, pursuant to § 23-4-401(a); in the emergency policy, the surcharge imposed was not requested by the utilities. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

23-4-410. Authority of Arkansas Public Service Commission to fix rates — Apportionment of increase.

CASE NOTES

Effective Date.

Arkansas Public Service Commission's determination that a decrease in an electric utility's rates, as established in the Commission's ratemaking order, would be effective for all bills rendered after June 15, 2007, which was the date the Commission issued the ratemaking order, was affirmed. Although the utility argued that it could face certain logistical difficulties in immediate implementation of the decrease, these difficulties could be met by utilizing appropriate debits or credits to customer bills. Entergy Arkansas, Inc. v. Ark. Pub. Serv. Comm'n, 104 Ark. App. 147, 289 S.W.3d 513 (2008), review denied, Entergy Ark., Inc. v. Ark. PSC, — Ark. —, — S.W.3d —, 2009 Ark. LEXIS 453 (Apr. 23, 2009).

Subchapter 5 — Utilities — Special Surcharges

23-4-501. Legislative findings and intent.

CASE NOTES

Analysis

Construction.
Low-income Assistance Programs.

Construction.

This section speaks in terms of "additional expenses with respect to existing facilities" and recovery through an interim surcharge of "such costs," and the court did not read the statute so broadly as to give the Arkansas Public Service Commission carte blanche authority to adopt and implement any public health or safety program of its choosing and assess the ratepayers for the cost. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Low-income Assistance Programs.

Surcharge statutes tie surcharges to existing facility costs and costs directly related to legislative or regulatory requirements, and there is no authority granted to the Arkansas Public Service Commission for the implementation of social programs; moreover; the same holds true of sliding-scale ratemaking where the statutory language of § 23-4-108 and Arkansas case law refer to costs associated with gas production and service to the ratepayers, not low-income assistance

programs. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

23-4-502. Filing interim rate schedule.

CASE NOTES

Analysis

Authority to Order Surcharge.
Low-Income Assistance Programs.

Authority to Order Surcharge.

Public Utility Commission's interim surcharge, challenged by gas company, was statutorily authorized because it served to recoup the costs associated with a regulatory requirement relating to the protection of the public health and safety; even though this requirement was imposed on the utilities by order and not by rule or regulation, it was implemented by the administrative agency to which the legislature had delegated the regulation of public utilities. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 80 Ark. App. 1, 91 S.W.3d 75 (2002), rev'd, Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Low-Income Assistance Programs.

Surcharge statutes tie surcharges to existing facility costs and costs directly related to legislative or regulatory requirements, and there is no authority granted to the Arkansas Public Service Commission for the implementation of social programs; moreover; the same holds true of sliding-scale ratemaking where the statutory language of § 23-4-108 and Arkansas case law refer to costs associated with gas production and service to the ratepayers, not low-income assistance programs. Ark. Gas Consumers, Inc. v. Ark. Pub. Serv. Comm'n, 354 Ark. 37, 118 S.W.3d 109 (2003).

Subchapter 6 — Railroads and Other Carriers Generally

23-4-601. Construction of §§ 23-4-602, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-602. Violations of §§ 23-4-601, 23-4-608 — 23-4-610, 23-4-615, 23-4-706, 23-10-301, and 23-11-101, tariff of charges, or rules of commission — Penalties — Recovery.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-606. Continuous railroad lines.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-607. Connecting railroad lines — Division of charges.

If any two (2) or more connecting lines of railroad in this state fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers, or cars over their lines, the Arkansas Transportation Commission [abolished] shall make the division and shall fix the pro rata part of such charges to be received by each of the connecting lines.

History. Acts 1903, No. 130, § 4, p. 218; C. & M. Dig., § 1647; Pope's Dig., § 1968; A.S.A. 1947, § 73-1410.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to correct a reference.

23-4-608. Penalties for violations of §§ 23-4-606 and 23-4-607 — Actions to recover penalties.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-609. Connecting railroad lines under one management.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-610. Railroads — Through freight rates and regulations.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-611. Railroads — Short lines.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-615. Railroads — Sleeping car tariffs.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-620. Notice of rate changes.

(a) Unless the Arkansas Transportation Commission [abolished] otherwise orders, no public utility shall make any change in any rate duly established under this act except after thirty (30) days' notice to the commission. This notice shall plainly state the change proposed to

be made in the rates then in force and the time when the changed rates will go into effect.

(b) The utility shall also give notice of the proposed changes to other interested parties as the commission in its discretion may direct.

(c) The commission, for good cause shown, may allow changes in rates without requiring the thirty (30) days' notice, under such conditions as it may prescribe. All allowed changes shall be immediately indicated upon its schedules by the public utility.

History. Acts 1935, No. 324, § 18; Pope's Dig., § 2081; Acts 1955, No. 31, § 1; 1975 (Extended Sess., 1976), No. 1181, § 1; A.S.A. 1947, § 73-217; reen. Acts 1987, No. 994, § 1.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to reflect a correction in (c) and the preceding note.

23-4-622. Investigation of rate changes.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-623. Suspension of proposed rates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-624. Interim implementation of suspended rates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-625. Rate increase not effective until final order.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-626. Authority of commission to fix rates — Apportionment of increase.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-627. Failure of commission to reach timely decision — Conditional implementation of suspended rates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-628. Issuance of commission's order — Rates to be collected.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-629. Surcharge to collect rates increased by courts.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-630. Refunds of excessive rate collections under bond.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-631. Refunds of excessive bonded collections — Order not stayed during rehearing.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-632. Surcharge to collect excessive refunds.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-633. Petition for mandamus.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-634. Suit to compel refunds — Proceeds.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-635. Changes in rates by common carriers.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-636. [Repealed.]

Publisher's Notes. This section, concerning the penalty for false reports regarding receipt of money for transportation, was repealed by Acts 2005, No. 1994, § 562. The section was derived from Acts 1897, No. 21, § 1, p. 28; C. & M. Dig., § 7136; Pope's Dig., § 9122; A.S.A. 1947, § 73-1430.

23-4-637. Discriminatory interterritorial freight rates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 7 — Railroads and Express Companies — Establishing Rates

23-4-703. Acts 1899, No. 53, not applicable to interstate traffic.

The provisions of this act shall not be construed as to require the Arkansas Transportation Commission [abolished] to investigate or call upon any railroad or express company for its schedule or tariff of charges in the transportation of passengers or property from any point wholly outside of this state or to in any way interfere with such rates or charges.

History. Acts 1899, No. 53, § 20, p. 82; C. & M. Dig., § 1629; Pope's Dig., § 1951; A.S.A. 1947, § 73-1520.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to correct an agency name in the text and the preceding note.

23-4-706. Penalties — Actions to recover.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-708. Rate sheets and tariff charges furnished commission by railroads.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes

to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-709. Rate-making procedure.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-714. Complaints — Investigation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-715. Complaints — Hearings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-716. Liability as to rates approved by commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-717. Railroads required to furnish copies of traffic agreements and other information to commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-4-718. Access to railroad books by commissioners — Penalties.

(a)(1) The commissioners of the Arkansas Transportation Commission [abolished], or any of them, shall have the right at such times as they may deem necessary to inspect the books and papers of any railroad company and to examine under oath any officer, agent, or employee of the railroad in relation to the business and affairs of the railroad.

(2) If any railroad refuses to permit the commissioners, or any of them, to examine its books and papers, the railroad company, for each offense, shall pay to the State of Arkansas not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each day it shall so fail and refuse.

(b) Any officer, agent, or employee of any railroad company who, upon proper demand, shall fail or refuse to exhibit to the commissioners, or any of them, any book or paper of such a railroad company which is in the possession or under the control of the officer, agent, or employee shall be deemed guilty of a misdemeanor and upon conviction in any court having jurisdiction shall be fined for each offense a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History. Acts 1899, No. 53, §§ 25, 26, p. 82; C. & M. Dig., §§ 1625, 1626; Pope's Dig., §§ 1947, 1948; A.S.A. 1947, §§ 73-1524, 73-1525.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to correct an agency name in (a)(1) and the preceding note.

23-4-719. Enforcement of Acts 1899, No. 53 — Mandamus.

If any person or corporation operating any railroad or express company fails, refuses, or neglects, after notice by the Arkansas Transportation Commission [abolished], to put up its rate sheet, giving

its tariff of charges in the manner, place, and time as provided in this act; to furnish the commission with the rate sheet and tariff of charges as provided for in this act; to furnish cars and motive power for the prompt transportation of freight as provided in this act; to comply with any provision of this act; or to make returns as required by this act, then the person or corporation shall be subject to a writ of mandamus. The writ shall be issued by any circuit court of this state where the person or corporation has an office, agent, or place of business to compel a compliance with the provisions and requirements of the act. The writ shall issue in the name of the State of Arkansas at the relation of the commission appointed under the provisions of this act, and failure to comply with the requirements shall be punishable as and for a contempt.

History. Acts 1899, No. 53, § 22, p. 82; C. & M. Dig., § 1694; Pope's Dig., § 1997; A.S.A. 1947, § 73-1521.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to correct an agency name in the first sentence and in the preceding note.

Subchapter 8 — Railroads and Transportation Companies — Passes and Free Transportation

SECTION.
23-4-803. [Repealed.]

23-4-803. [Repealed.]

Publisher's Notes. This section, concerning the penalty for state officers accepting passes, was repealed by Acts 2005, No. 1994, § 563. The section was derived from Acts 1887, No. 22, § 4, p. 27; C. & M. Dig., § 891; Pope's Dig., § 1093; A.S.A. 1947, § 73-1530.

Subchapter 10 — Pole Attachments

SECTION.
23-4-1001. Definitions.
23-4-1002. Nondiscriminatory access for pole attachments.
23-4-1003. Regulation by commission of rates, terms, and conditions.
23-4-1004. Authority of commission to hear complaints.
23-4-1005. Certification.
23-4-1006. Applicability.

23-4-1001. Definitions.

As used in this subchapter:

(1)(A) "Pole attachment" means the attachment of wires and related equipment to a pole, duct, or conduit owned or controlled by a public utility for the provision of:

(i) Electric service;

(ii) Telecommunication service;

(iii) Cable television service;

(iv) Internet access service; or

(v) Other related information services.

(B) "Pole attachment" does not mean multiground neutral connections; and

(2)(A) "Public utility" means an electric utility as defined in § 23-1-101, an electric cooperative as defined in § 23-18-201, or a telecommunications provider as defined in § 23-17-403(24).

(B) "Public utility" does not mean a municipal electric utility.

History. Acts 2007, No. 740, § 1.

23-4-1002. Nondiscriminatory access for pole attachments.

A public utility shall provide nondiscriminatory access for a pole attachment to:

(1) An electric utility;

(2) A telecommunications provider;

(3) A cable television service; or

(4) A cable Internet access service.

History. Acts 2007, No. 740, § 1.

23-4-1003. Regulation by commission of rates, terms, and conditions.

(a) The Arkansas Public Service Commission shall regulate the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment.

(b)(1) The commission shall develop rules necessary for the effective regulation of the rates, terms, and conditions upon which a public utility shall provide access for a pole attachment.

(2) In developing and implementing the rules under this subsection, the commission shall consider:

(A) The interests of the subscribers of the services offered through pole attachments;

(B) The interests of the consumers of the public utility services;

(C) Maintenance of reliability of public utility services; and

(D) Compliance with applicable safety standards.

(3) The commission shall adopt the initial rules under this subsection within one (1) year of July 31, 2007.

(c) Nothing in this section prevents a public utility, an electric utility, a telecommunications provider, a cable television service, or a cable Internet access service from entering into a voluntarily negotiated, written agreement regarding the rates, terms, and conditions upon which access for a pole attachment is provided.

History. Acts 2007, No. 740, § 1.

23-4-1004. Authority of commission to hear complaints.

(a) The Arkansas Public Service Commission may hear and determine all complaints arising from:

(1) A public utility's failure or refusal to provide access for a pole attachment;

(2) The inability of a public utility and an entity seeking access for a pole attachment to reach a voluntarily negotiated, written agreement governing access for the pole attachment; and

(3) Disputes between a public utility and an entity over the implementation of an existing contract granting the entity access for a pole attachment.

(b) A public utility shall provide information required for the commission to verify that the costs associated with access for pole attachments provided by the public utility are just and reasonable.

(c)(1) The commission shall resolve any complaint or dispute that the commission may hear under this section within one hundred eighty (180) days after the complaint is filed with the commission.

(2) However, the commission by rule may extend the time to resolve a complaint or dispute for up to three hundred sixty (360) days after the complaint is filed.

History. Acts 2007, No. 740, § 1.

23-4-1005. Certification.

Upon the adoption of rules under § 23-4-1003, the Arkansas Public Service Commission shall certify to the Federal Communications Commission that:

(1) The Arkansas Public Service Commission regulates the rates, terms, and conditions of access for pole attachments;

(2) In regulating the rates, terms, and conditions of access for pole attachments, the state considers the interests of the:

(A) Subscribers of service offered by the pole attachments; and

(B) Customers of the public utility; and

(3) The Arkansas Public Service Commission has adopted rules under this subchapter that:

(A) Implement the Arkansas Public Service Commission's regulatory authority; and

(B) Provide that complaints heard by the Arkansas Public Service Commission under this subchapter shall be resolved:

(i) Within one hundred eighty (180) days after the complaint is filed; or

(ii) If the Arkansas Public Service Commission elects to extend the period, not exceeding three hundred sixty (360) days after the complaint is filed.

History. Acts 2007, No. 740, § 1.

23-4-1006. Applicability.

Nothing in this subchapter shall affect the authority and jurisdiction of the Federal Communications Commission over the rates, terms, and conditions of a pole attachment until after the final certification of the Arkansas Public Service Commission under § 23-4-1005.

History. Acts 2007, No. 740, § 1.

Subchapter 11 — Cooperatives

Effective Dates. Acts 2009, No. 676, § 2: Mar. 27, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the costs that drive electric utility costs are constantly changing; that electric cooperatives need to have procedures that permit their rates to change in response to those changing conditions; and that this act is immediately necessary because it is crucial to the provision of safe and reliable electric service that electric cooperatives recover their costs in a timely manner. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-4-1101. Definitions.

As used in this subchapter:

(1) "Board" means the board of directors of a generation and transmission cooperative;

(2) "Generation and transmission cooperative" means a rural electric cooperative formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq., that:

(A) Does not have a certificated service territory; and

(B) Exclusively sells electricity at wholesale;

(3) "Member cooperative" means a rural electric cooperative that sells electricity at retail and is a member of a generation and transmission cooperative; and

(4) "Retail cooperative member" means the individual member-owner of a member cooperative.

History. Acts 2009, No. 676, § 1.

23-4-1102. Exemption from general rate case procedure.

A generation and transmission cooperative may modify its rates and charges if:

(1) At least three-fourths (3/4) of its board votes to change its rates and charges;

(2) A proposed increase in the generation and transmission cooperative's rates and charges does not exceed five percent (5%) in any twelve-month period of the total gross revenues of the generation and transmission cooperative; and

(3) Any additional requirements of this subchapter are satisfied.

History. Acts 2009, No. 676, § 1.

23-4-1103. Notification of proposed rate and charge modification.

(a)(1) A generation and transmission cooperative shall notify the Arkansas Public Service Commission, the Attorney General, and the member cooperatives in writing at least sixty (60) days before the board votes on a proposed modification of its rates and charges under § 23-4-1102.

(2)(A) The notice under subdivision (a)(1) of this section shall:

(i) Be in writing;

(ii) Include a schedule of the proposed modification of rates and charges; and

(iii) Include the effective date of the proposed change.

(B) However, if the board subsequently reduces a proposed increase in rates and charges after providing notice under subdivision (a)(1) of this section, the board does not have to provide any additional notice under this subsection.

(b)(1) The generation and transmission cooperative shall provide notice of its proposed modification of its rates and charges to the public not less than forty (40) days before the board votes on the proposed change in its rates and charges.

(2) The notice under subdivision (b)(1) of this section shall:

(A) Be substantially similar to the public notice required by the commission's Rules of Practice and Procedure for general rate case procedures;

(B) Be published in:

(i) A newspaper of general circulation in the service territory of the generation and transmission cooperative; or

(ii) Either of the following:

(a) Any publication that is regularly provided to the retail cooperative members by the member cooperatives; or

(b) The generation and transmission cooperative's newsletter to retail cooperative members; and

(C) Include a statement estimating:

(i) The retail impact of the proposed change in rates and charges on:

(a) A per-kilowatt-hour basis; and

(b) An average residential retail cooperative member's monthly bill; and

(ii) The effective date of the proposed change in rates and charges.

History. Acts 2009, No. 676, § 1.

23-4-1104. Alternative procedure for modifying rates and charges of a generation and transmission cooperative.

(a)(1)(A) After the board approves the modification in rates and charges under § 23-4-1102, the generation and transmission cooperative shall file for the approval of the Arkansas Public Service Commission an application for the change in rates and charges and tariffs containing the proposed change in rates and charges.

(B) However, a rate rider or other rider to the generation and transmission cooperative's base rates and charges shall not be modified under this subchapter unless the commission determines otherwise.

(2) In addition to an attachment containing the proposed tariffs to effect the modification of the rates and charges, the application shall provide the following:

(A) Proof of the board vote required by § 23-4-1102;

(B) The proof of notice required by § 23-4-1103;

(C) A current calculation of the generation and transmission cooperative's:

(i) Times interest earned ratio;

(ii) Debt service coverage ratio; and

(iii) Margins as a percent of revenue for the last available calendar year;

(D) An analysis of the impact of the proposed change in rates and charges on each member cooperative's cost of wholesale power that is acquired from the generation and transmission cooperative;

(E) Documentary evidence that the impact of the proposed change in rates and charges does not exceed five percent (5%) of the generation and transmission cooperative's total gross revenues for the previous calendar year;

(F) Documentation that shows the derivation of the generation and transmission cooperative's proposed changes in its rates and charges; and

(G)(i) Any other supporting documentation or evidence required by the commission.

(ii)*(a)* However, the commission shall not require the generation and transmission cooperative to prepare a cost of service study.

(b) Instead of a new cost of service study, the generation and transmission cooperative shall rely upon the most recent commission-approved cost allocation.

(b) Within ninety (90) days after the date of filing the generation and transmission cooperative's application, the commission shall issue its final determination regarding the proposed modification of the rates and charges of the generation and transmission cooperative.

History. Acts 2009, No. 676, § 1.

23-4-1105. Alternative procedure for modifying rates and charges of a member cooperative.

(a) A member cooperative may propose a modification of its retail rates and charges to incorporate the proposed change in the generation and transmission cooperative's wholesale rates and charges filed under § 23-4-1104 if:

(1) The member cooperative files its application for a modification of its retail rates and charges with the Arkansas Public Service Commission on the same date as the generation and transmission cooperative files its application for a modification of its change in wholesale rates and charges under § 23-4-1104; and

(2) The member cooperative apportions its proposed change in rates and charges in a manner that reflects, as closely as practicable, its cost of providing service to each class.

(b) Within ninety (90) days after a member cooperative files its application under subsection (a) of this section, the commission shall review and approve the modification of the rates and charges of a member cooperative's retail rates and charges that reasonably reflect those changes in the generation and transmission cooperative's wholesale rates and charges that were approved by the commission under § 23-4-1104.

History. Acts 2009, No. 676, § 1.

23-4-1106. Limitation on increase in rates.

The generation and transmission cooperative shall not increase its rates and charges under this subchapter by an aggregate total of more than eight percent (8%) during any twenty-four-month period.

History. Acts 2009, No. 676, § 1.

23-4-1107. Arkansas Public Service Commission's jurisdiction not affected.

This subchapter does not affect the Arkansas Public Service Commission's jurisdiction over a generation and transmission cooperative , including without limitation the authority to investigate and set the rates and charges of the generation and transmission cooperative, or a member cooperative as otherwise provided by law.

History. Acts 2009, No. 676, § 1.

CHAPTER 10

TRANSPORTATION OF PASSENGERS AND FREIGHT GENERALLY

SUBCHAPTER.
2. Passengers.
4. Freight — Railroads.

Subchapter 2 — Passengers

SECTION.
23-10-201 — 23-10-208. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2005, No. 1994, § 564, § 23-10-202 was repealed even though the text of that Code section was not set out in the act and stricken through.

23-10-201 — 23-10-208. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2005, No. 1994, § 564, § 23-10-202 was repealed even though the text of that Code section was not set out in the act and stricken through.

Publisher's Notes. These sections, concerning depot facilities, drinking water on passenger trains, bulletin boards showing time of arrival and departure of trains, passenger trains to depart only from depot at junction, announcements of departures, destinations, and track numbers, violation of §§ 23-10-204 and 23-10-205 a misdemeanor, protection of passengers from annoyance or fraud and penalty for perpetration, and penalties for business solicitations of passengers, were repealed by Acts 2005, No. 1994, § 564. The sections were derived from the following sources:

23-10-201. Acts 1891, No. 17, § 6, p. 15; 1903, No. 160, §§ 1-3, p. 302; C. & M. Dig., §§ 950-953; Pope's Dig., §§ 1154-1157; A.S.A. 1947, §§ 73-1201 — 73-1205.

23-10-202. Acts 1891, No. 17, § 6, p. 15; C. & M. Dig., § 953; Pope's Dig., § 1157; A.S.A. 1947, § 73-1205.

23-10-203. Acts 1891, No. 132, §§ 1, 2, p. 221; C. & M. Dig., §§ 954, 955; Pope's Dig., §§ 1158, 1159; A.S.A. 1947, §§ 73-1206, 73-1207.

23-10-204. Acts 1907, No. 146, § 1, p. 353; C. & M. Dig., § 960; Pope's Dig., § 1164; A.S.A. 1947, § 73-1208.

23-10-205. Acts 1907, No. 146, §§ 2-4, p. 353; C. & M. Dig., §§ 961-963; Pope's Dig., §§ 1165-1167; A.S.A. 1947, §§ 73-1209 — 73-1211.

23-10-206. Acts 1907, No. 146, § 5, p. 353; C. & M. Dig., § 964; Pope's Dig., § 1168; A.S.A. 1947, § 73-1212.

23-10-207. Acts 1889, No. 93, § 1, p. 123; 1897, No. 34, § 1, p. 44; C. & M. Dig., § 945; Pope's Dig., § 1149; A.S.A. 1947, § 73-1213.

23-10-208. Acts 1907, No. 236, §§ 1-3, p. 553; C. & M. Dig., §§ 947-949; Pope's Dig., §§ 1151-1153; A.S.A. 1947, §§ 73-1215 — 73-1217.

Subchapter 3 — Freight — Carriers Generally

23-10-301. Express and freight rules prescribed by Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-10-302. Express offices and delivery — Penalties.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 4 — Freight — Railroads

SECTION.

23-10-406. Penalties for violations of §§ 23-10-402, 23-10-403, 23-10-405, and 23-10-409 — 23-10-431, or rules of commission — Actions to recover.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board

and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-10-415. Duty to exchange and return cars.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to reflect a name change.

23-10-432. Duty to furnish cars — Reasonable time for requesting cars.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-10-434. Liability for failure to furnish or exchange cars — Exceptions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-10-435. Liability for cars of another railroad.

(a) Every railroad company using cars of another railroad company, or cars which have been delivered to it by the other railroad company, shall be liable to the party entitled thereto to pay for the reasonable use and hire thereof and for injury or damages to or destruction of the cars, while in its possession or under its control, for the amount of such injury. In the case of cars in the shipment of freight between points wholly within this state, the amount for the use or hire of the cars may

be prescribed by the Arkansas Transportation Commission [abolished], except where the owners of the cars and the railway companies agree upon the compensation, in which case the amount so fixed shall govern.

(b) When any railroad company or owner of any car is dissatisfied with the amount fixed by the commission for the use, hire, loss, or destruction of, or damage to, the cars, or when the railroad company which is liable therefor fails to pay for the use, hire, loss, or destruction of the cars, the commission or person entitled thereto, or which is liable for the use, hire, loss, injury, or destruction of the cars, shall be entitled to establish the reasonable value thereof in a suit brought in any court of this state having jurisdiction of the parties and of the amount in controversy, and the court shall render such judgment as to it shall deem just and reasonable.

History. Acts 1909, No. 277, § 2, p. 814; C. & M. Dig., § 1635; Pope's Dig., § 1956; A.S.A. 1947, § 73-1306.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This section is being set out to correct an agency name in (b) and the preceding note.

23-10-436. Penalty for gross negligence in not furnishing or exchanging cars — Fee of prosecuting attorney.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-10-437. Intrastate freight — Rules and regulations.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

CHAPTER 11

ESTABLISHMENT AND ORGANIZATION OF RAILROADS

Subchapter 1 — General Provisions

23-11-101. Enforcement of laws or orders on complaint.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-103. Railroads and express companies — Annual reports — Failure to report — Penalty.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-104. Report of commission as to information regarding railroad companies.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 2 — Railroad Incorporation Act of 1959

23-11-202. Definitions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers,

functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-203. Articles of incorporation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-204. Formation of railroad corporation — Application — Contents.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-205. Application for incorporation — Hearing — Order of commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-207. Filing of papers — Effect.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-209. Specific powers and liabilities.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-219. Subscription contracts for sale of stock.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-220. Amendment of articles of incorporation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-221. Dissolution or liquidation of railroad corporation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-222. Corporations existing prior to June 11, 1959 — Application of subchapter — Extension of existence.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-11-223. Corporations existing prior to June 7, 1945 — Extension of charter.

Publisher's Notes. Acts 1945, No. 181, § 4, provided, in part, that the primary purpose of the act was to abolish the State Board of Railroad Incorporation and to vest in the Arkansas Public Service Commission all powers and duties of the State Board of Railroad Incorporation and provided for the transfer of the property of the State Board of Railroad Incorporation to the Arkansas Public Service Commission.

The powers and duties of the Arkansas Public Service Commission as to railroads were transferred to the Arkansas Transportation Commission. See Publisher's Notes to Chapter 2 of this title. The Arkansas Transportation Commission was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3 abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to reflect a correction.

Subchapter 3 — Sale, Lease, or Consolidation

23-11-302. Authority to sell or lease road or property to connecting foreign railroad — Authority to acquire other railroads — Ratification.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 4 — Foreign Railroads

23-11-402. Purchase or lease state roads — Exception.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes

to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

CHAPTER 12

OPERATION AND MAINTENANCE OF RAILROADS

SUBCHAPTER.

Subchapter 1 — General Provisions

23-12-101. Sections 23-12-101 — 23-12-103 cumulative.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-102. Inspection of railroads by Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-103. Unsafe tracks, bridges, etc. — Inspection — Notice to railroad of necessary repairs, etc. — Failure to repair or to stop traffic — Liability for injuries — Penalties.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-104. Number and frequency of trains and streetcars.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 2 — Roadbeds and Rights-of-Way

SECTION.

23-12-201. Maintenance of right-of-way free from obstructions — Penalty.

CASE NOTES

Punitive Damages.

Where railroad had allowed vegetation to remain overgrown at a crossing for more than 18 months prior to when a passenger in a garbage truck was severely injured in a collision with a train at that crossing, the railroad's noncompliance with this section regarding keeping the crossing clear could have resulted in liability for fines approaching up to $182,500 per year; hence, on appeal, the court held that punitive damages award was not excessive because it was comparable to such civil sanctions. Union Pac. R.R. Co. v. Barber, 356 Ark. 268, 149 S.W.3d 325 (2004), cert. denied, Union Pac. R.R. v. Barber, 543 U.S. 940, 125 S. Ct. 320 (2004).

23-12-203. Clearing right-of-way following derailment or wreck.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-206. Rail line abandonment process.

(a) After an operator of a railroad within the State of Arkansas has filed a notice of rail line abandonment consistent with the Interstate Commerce Commission Termination Act of 1995, Pub. L. No. 104-88,

and notice of the proposed rail line abandonment has been received by the Arkansas Economic Development Council, the council shall notify appropriate entities of the proposed abandonment.

(b)(1) Within ten (10) working days of receipt of a notice to abandon a rail line by an operator of a railroad within the State of Arkansas, the council shall notify in writing:

(A) All regional mobility authorities and all regional intermodal authorities that are directly affected by the proposed rail line abandonment within their areas of jurisdiction; and

(B) If no regional mobility authorities or regional intermodal authorities exist within the region to be affected by the proposed rail line abandonment, all mayors and county judges who are directly affected by the proposed rail line abandonment within their areas of jurisdiction.

(2) If there is an existing regional mobility authority or regional intermodal authority that is directly affected by a proposed rail line abandonment in their areas of jurisdiction, either or both of these authorities shall notify the council within ten (10) working days of the receipt of notice of the proposed rail line abandonment of their interest or lack of interest in obtaining or preserving the rail line proposed for abandonment.

(3) If there is no existing regional mobility authority or regional intermodal authority in the area proposed for rail line abandonment, the affected mayors and county judges within the area of the proposed rail line abandonment shall notify the council within ten (10) working days of the receipt of notice of the proposed rail line abandonment of:

(A) Their lack of interest in obtaining and preserving the rail line proposed for abandonment;

(B) Their interest in obtaining or preserving through existing resources the rail line proposed for abandonment; or

(C) Their interest in forming a new regional mobility authority or regional intermodal authority, part of whose purpose would be to obtain or preserve the rail line proposed for abandonment.

(4) If the mayors or county judges, or both, in the areas directly affected by the proposed rail line abandonment respond indicating their intention to form a new regional mobility authority or regional intermodal authority, part of the purpose of which would be to obtain or preserve the rail line proposed for abandonment, the mayors or county judges are allowed not more than one hundred twenty (120) days from the notice of the proposed rail line abandonment to form a regional mobility authority or regional intermodal authority to obtain or preserve the rail line proposed for abandonment.

(5) Any costs associated with maintenance of the rail line proposed for abandonment shall be borne by the receiving party from the date of the notice of the proposed rail line abandonment until the ownership or preservation of the abandoned rail line has been determined.

History. Acts 2007, No. 747, § 1; 2009, No. 164, § 2.

Amendments. The 2009 amendment, in (a), inserted "line" following "rail" in two places, and made a stylistic change.

23-12-207. Transfer of ownership or responsibility of railroad right-of-way.

(a) Any municipality, county, regional mobility authority, or regional intermodal authority may choose to operate or lease for operation any railroad right-of-way obtained or preserved from the abandonment of a rail line under § 23-12-206.

(b) Any municipality, county, regional mobility authority, or regional intermodal authority acquiring ownership of any railroad right-of-way obtained or preserved from the abandonment of a rail line under § 23-12-206 shall be responsible for any maintenance of the abandoned rail line.

History. Acts 2007, No. 747, § 1.

Subchapter 3 — Crossings and Switches

23-12-302. Railroad switch connections to be permitted.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 4 — Equipment — Safety Precautions

23-12-401. [Repealed.]

Publisher's Notes. This section, concerning requirements of construction of engines, was repealed by Acts 2005, No. 1994, § 565. The section was derived from Acts 1917, No. 75, §§ 1-3, p. 338; C. & M. Dig., §§ 8587-8589; Pope's Dig., §§ 11165-11167; A.S.A. 1947, §§ 73-701 — 73-703.

23-12-403. [Repealed.]

Publisher's Notes. This section, concerning requirements of construction of caboose cars, was repealed by Acts 2005 No. 1994, § 566. The section was derived from Acts 1911, No. 418, §§ 1-4; C. & M. Dig., §§ 956-959; Pope's Dig., §§ 1160-1163; A.S.A. 1947, §§ 73-707 — 73-710.

23-12-405. [Repealed.]

Publisher's Notes. This section, concerning first aid kits and drinking water requirements, was repealed by Acts 2005, No. 1994, § 567. The section was derived from Acts 1953, No. 130, §§ 1-4; A.S.A. 1947, §§ 73-741 — 73-744.

23-12-410. Audible warning device to be sounded at crossing — Penalty and damages.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

Subchapter 5 — Employees

23-12-509. Limit on hours of service of trainmen on freight trains — Penalties for noncompliance — Liability for death or injury.

(a)(1) Any company owning or operating a railroad over thirty (30) miles in length in whole or in part within this state shall not permit or require any conductor, engineer, fireman, brakeman, or any trainman on any train, who has worked in his or her respective capacity for sixteen (16) consecutive hours, to again be required to go on duty or perform any work until he or she has had at least eight (8) hours' rest, except in cases of wrecks or washout.

(2) However, at the expiration of the sixteen (16) hours' continuous service, the engineer and trainmen on any train which is at a distance not exceeding twenty-five (25) miles from any division terminal or destination point shall be permitted, if they so elect, to run the train into the division terminal or destination point. The additional service permitted under this subdivision (a)(2) shall not be so construed as to relieve any railroad corporation from liabilities incurred under subsection (c) of this section.

(b) Any railroad company or corporation knowingly violating any of the provisions of this section shall be liable to a penalty of not less than one hundred dollars ($100) nor more than two hundred dollars ($200) for the first offense. For any subsequent offense, it shall be liable for a penalty of not less than two hundred dollars ($200) nor more than three hundred dollars ($300). The monetary penalty shall be recovered in a civil action in the name of the state.

(c) In addition to the penalty prescribed in subsection (b) of this section, any corporation violating the provisions of this section shall not

be permitted to interpose the defense of contributory negligence in the event of action being brought to recover for damages resulting from any accident which shall occur and by which injury shall be inflicted on any employee who may be detained in service more than sixteen (16) hours, notwithstanding that the negligence of the injured employee may have caused his or her own injury. Nor shall the defense of contributory negligence be interposed if the injury resulted in the death of the employee and the action is brought for the benefit of his or her next of kin.

(d) The provisions of this section shall not apply to passenger trains.

History. Acts 1903, No. 144, §§ 1-3, p. 245; C. & M. Dig., §§ 7077-7079; Pope's Dig., §§ 9059-9061; A.S.A. 1947, § 73-905 — 73-907.

Publisher's Notes. This section is being set out to reflect a punctuation correction in (a)(2).

23-12-511. [Repealed.]

Publisher's Notes. This section, concerning drinking water furnished to maintenance-of-way employees — enforcement — penalties, was repealed by Acts 2005, No. 1994, § 568. The section was derived from Acts 1953, No. 284, §§ 1-3; A.S.A. 1947, §§ 73-920 — 73-922.

23-12-513. [Repealed.]

Publisher's Notes. This section, concerning shelter requirements where railroad equipment constructed or repaired, was repealed by Acts 2005, No. 1994, § 569. The section was derived from Acts 1905, No. 233, §§ 1, 2, p. 593; C. & M. Dig., §§ 7075, 7076; Pope's Dig., §§ 9057, 9058; A.S.A. 1947, §§ 73-901, 73-902.

Subchapter 6 — Train Service Generally

23-12-603. Arkansas Transportation Commission [abolished] may require passenger trains to stop at all stations — Exception.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-605. Union passengers or freight depots.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers,

functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-608. Establishment, discontinuance, modification, etc., of service generally — Investigation of objects sought to be accomplished — Findings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-609. Establishment, discontinuance, modification, etc., of service generally — Failure to comply with findings and mandate — Penalty.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-611. Discontinuance, dualization, or modification of agency station — Petitions to reestablish.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-12-613. Receiver appointed upon attempt to abandon.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 8 — Offenses Relating to Railroads

23-12-801. [Repealed.]

Publisher's Notes. This section, concerning improper language in waiting rooms or cars, was repealed by Acts 2005, No. 1994, § 570. The section was derived from Acts 1891, No. 17, § 5, p. 15; C. & M. Dig., § 965; Pope's Dig., § 1169; A.S.A. 1947, § 73-1103.

23-12-803. [Repealed.]

Publisher's Notes. This section, concerning use of track as highway, was repealed by Acts 2005, No. 1994, § 571. The section was derived from Acts 1875, No. 45, § 3, p. 121; C. & M. Dig., § 8596; Pope's Dig., § 11174; A.S.A. 1947, § 73-1109.

23-12-806. [Repealed.]

Publisher's Notes. This section, concerning animals killed on railroad and the penalty for disposition of carcass without notice, was repealed by Acts 2005, No. 1994, § 572. The section was derived from Acts 1961 (1st Ex. Sess.), No. 61, § 15; A.S.A. 1947, § 73-1102.

Subchapter 9 — Liability for Injuries

23-12-911. [Repealed.]

Publisher's Notes. This section, concerning killing or injuring livestock, and claims agent, was repealed by Acts 2005, No. 1994, § 573. The section was derived from Acts 1961 (1st Ex. Sess.), No. 61, §§ 11, 12; A.S.A. 1947, §§ 73-1010, 73-1011.

CHAPTER 13

MOTOR CARRIERS

Subchapter 1 — General Provisions

SECTION.

23-13-101. [Repealed.]

A.C.R.C. Notes. This section was also amended by Acts 2005, No. 1994, § 147. Pursuant to Arkansas Constitution, Article 5, § 23, the repeal of this section by Acts 2005, No. 1691, § 1 superseded the subsequent amendment of this section by Acts 2005, No. 1994, § 147.

Publisher's Notes. This section, concerning hours of duty and rest period of drivers, penalties, and exceptions, was repealed by Acts 2005, No. 1691, § 1. The section was derived from Acts 1931, No. 157, §§ 1-3; Pope's Dig., §§ 3450-3452; A.S.A. 1947, §§ 73-1744 — 73-1746; Acts 1993, No. 1212, § 1.

23-13-102. Inspection of licensees — Employment of inspectors — Restraining operations.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 2 — Motor Carrier Act

SECTION.

Effective Dates. Acts 2003, No. 1117, § 4: Apr. 7, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that requiring a motor carrier or broker to report annually to the Arkansas Highway Commission creates an unjustified burden on the motor carrier or broker operating in the State of Arkansas; that other provisions of Arkansas law require a motor carrier or broker to report annually to other authorities; and that this act is immediately necessary because these dual reporting requirements are duplicative and need to be eliminated to reduce the duplication of government efforts. There-

fore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2003, No. 1121, § 2: Apr. 7, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that enforcement officers of the Arkansas Highway Commission are required to enforce the federal motor carrier safety laws and the rules and regulations of the Arkansas Highway Commission with respect to motor carrier safety of operations and equipment; that the enforcement officers must have the authority to stop and require the drivers of commercial vehicles to exhibit and submit for inspection all documents required to be carried in vehicles engaged in interstate or intrastate commerce, including bills of lading, waybills, invoices, or other evidences of the character of the lading being transported in those vehicles; and that this act is immediately necessary because that authority is lacking in current law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 232, § 4: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in August 2005 the United States Congress enacted the Uniform Carrier Registration Act of 2005; that the Uniform Carrier Registration Act of 2005 is to replace the single state registration program on or before January 1, 2007; that the deadline has passed and Arkansas has not yet had an opportunity to respond to this law due to its biennial legislative sessions; and that there is an immediate need for implementation of the provisions of this act to ensure that Arkansas is in compliance with the Uniform Carrier Registration Act of 2005 to prevent the loss of funding. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-13-203. Definitions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to reflect an omission.

CASE NOTES

Analysis

Common Carriers.
Private Carrier.

Common Carriers.

Search of the cargo of defendant's commercial truck pursuant to the Arkansas Motor Carrier Act did not violate the Fourth Amendment because warrantless inspections of commercial trucks advanced a substantial governmental interest and were necessary, and the Act provided a permissible warrant substitute as its reach was limited to certain commercial vehicles under this section and §§ 23-13-204 and 23-13-206; it provided notice to commercial truck drivers of the possibility of a roadside inspection by a designated enforcement officer under § 23-13-217; it limited the scope of the enforcement officers' inspections to an examination solely for regulatory compliance under § 23-13-217(c)(1), (c)(1)(B); and although the Act did not designate specific times when the enforcement officers could conduct inspections, such a limitation would render the entire inspection scheme unworkable and meaningless. United States v. Ruiz, 569 F.3d 355 (8th Cir. 2009).

Private Carrier.

Hotel van used to transport hotel guests to a nearby restaurant was a private carrier within the meaning of subdivision (a)(18) of this section, not a common carrier as defined in subdivision (a)(5), and the driver of the van had not breached the duty of ordinary care due passengers of a common carrier by parking the van away from the curb outside the restaurant or by failing to assist the guest in alighting from the van. Crenshaw v. Doubletree Corp., 81 Ark. App. 157, 98 S.W.3d 836 (2003).

23-13-204. Applicability of subchapter.

CASE NOTES

Constitutionality.

Search of the cargo of defendant's commercial truck pursuant to the Arkansas Motor Carrier Act did not violate the Fourth Amendment because warrantless inspections of commercial trucks advanced a substantial governmental interest and were necessary, and the Act provided a permissible warrant substitute as its reach was limited to certain commercial vehicles under this section and §§ 23-13-203 and 23-13-206; it provided notice to commercial truck drivers of the possibility of a roadside inspection by a designated enforcement officer under § 23-13-217; it limited the scope of the enforcement officers' inspections to an examination solely for regulatory compliance under § 23-13-217(c)(1) and (c)(1)(B); and although the Act did not designate specific times when the enforcement officers could conduct inspections, such a limitation would render the entire inspection scheme unworkable and meaningless. United States v. Ruiz, 569 F.3d 355 (8th Cir. 2009).

23-13-206. Exemptions.

CASE NOTES

Interstate Commerce.

Search of the cargo of defendant's commercial truck pursuant to the Arkansas Motor Carrier Act did not violate the Fourth Amendment because warrantless inspections of commercial trucks advanced a substantial governmental interest and were necessary, and the Act provided a permissible warrant substitute as its reach was limited to certain commercial vehicles under §§ 23-13-203, 23-13-204, and this section; it provided notice to commercial truck drivers of the possibility of a roadside inspection by a designated enforcement officer under § 23-13-217; it limited the scope of the enforcement officers' inspections to an examination solely for regulatory compliance under § 23-13-

217(c)(1) and (c)(1)(B); and although the Act did not designate specific times when the enforcement officers could conduct inspections, such a limitation would render the entire inspection scheme unworkable and meaningless. United States v. Ruiz, 569 F.3d 355 (8th Cir. 2009).

23-13-207. Regulation by Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-208. General duties and powers of commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-209. Mandatory injunction — Requirement that commission take jurisdiction.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-210. Hearings before commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-211. Appeals — Entitlement.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-212. Appeals — Notice.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-213. Appeals — Stay of operating authority pending appeal.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-214. Appeals — Transcripts.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-215. Appeals — Filing fees.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-217. Enforcement officers.

(a) The State Highway Commission shall name and designate enforcement officers charged with the duty of policing and enforcing the provisions of this subchapter.

(b) The enforcement officers shall have authority to enforce § 27-50-308 and the Omnibus DWI Act, § 5-65-101 et seq., and shall have authority to make arrests for violation of any of the provisions of this subchapter, orders, rules, and regulations of the commission and to serve any notice, order, or subpoena issued by any court, the commission, its secretary, or any employee authorized to issue same, and to this end shall have full authority with jurisdiction within the entire State of Arkansas.

(c)(1) For the purpose of determining whether any motor vehicle or the operator of that vehicle is in compliance with the rules and regulations of the commission with respect to safety of operations and equipment or any other provision of this chapter, provided the operator is engaged in intrastate or interstate movements on the highways, roads, and streets of this state and the operator or vehicle is subject to the rules and regulations, the enforcement officers shall be authorized to:

(A) Require the operator of the vehicle to stop, exhibit, and submit for inspection all documents required to be carried in that vehicle or by that operator pursuant to the regulations regarding the operator or operators of that vehicle, including, but not limited to, the operator or driver's duty status or hours-of-service records, bills of lading, waybills, invoices, or other evidences of the character of the lading being transported in the vehicle, as well as all records required to be carried by the regulations concerning that vehicle;

(B) Inspect the contents of the vehicle for the purpose of comparing the contents with bills of lading, waybills, invoices, or other evidence of ownership or of transportation for compensation; and

(C) Require the operator to submit the vehicle for a safety inspection pursuant to the rules and regulations, if deemed necessary by the officers.

(2) If the operator does not produce sufficient or adequate documents regarding his or her operation of the vehicle in conformance with the rules and regulations or is determined by the officers to be out of compliance with the rules and regulations, in addition to any other action that may be taken by the officers pursuant to the provisions of this subchapter, the officers shall be authorized to immediately place that operator out of service in accordance with the rules and regulations.

(3)(A) If the operator does not produce sufficient or adequate documents regarding the vehicle in conformance with the rules and regulations, the vehicle is determined by the officers to be out of compliance with the rules and regulations.

(B) If the operator refuses to submit the vehicle to a safety inspection in conformance with the rules and regulations or if the officer or officers determine the vehicle is unsafe for further operation following a safety inspection in accordance with the rules and regulations, in addition to any other action that may be taken by the officers pursuant to this subchapter, the officers shall be authorized to immediately place that vehicle out of service in conformance with the rules and regulations.

(d) It shall be the further duty of the enforcement officers to impound any books, papers, bills of lading, waybills, and invoices that would indicate the transportation service being performed is in violation of this subchapter, subject to the further orders of the court having jurisdiction over the alleged violation.

History. Acts 1955, No. 397, § 7; A.S.A. 1947, § 73-1760; Acts 1989, No. 306, § 1; 1997, No. 1026, § 1; 2003, No. 1121, § 1.

CASE NOTES

Inspection of Vehicles.

Court did not err in denying the defendant's motion to suppress evidence where the defendant was stopped for a safety check and a drug dog alerted to drugs; the inspection officer had the right to search the truck for safety reasons and the driver admitted he had a radar detector. Willoughby v. State, 76 Ark. App. 329, 65 S.W.3d 453 (2002).

Search of the cargo of defendant's commercial truck pursuant to the Arkansas Motor Carrier Act did not violate the Fourth Amendment because warrantless inspections of commercial trucks advanced a substantial governmental interest and were necessary, and the Act provided a permissible warrant substitute as its reach was limited to certain commercial vehicles under §§ 23-13-203, 23-13-204, and 23-13-206; it provided notice to commercial truck drivers of the possibility of a roadside inspection by a designated enforcement officer under this section; it limited the scope of the enforcement officers' inspections to an examination solely for regulatory compliance under subdivisions (c)(1) and (c)(1)(B) of this section; and although the Act did not designate specific times when the enforcement officers could conduct inspections, such a limitation would render the entire inspection scheme unworkable and meaningless. United States v. Ruiz, 569 F.3d 355 (8th Cir. 2009).

Cited: United States v. Belcher, 288 F.3d 1068 (8th Cir. 2002).

23-13-218. Certificate of public convenience and necessity — Requirement.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-219. Certificate of public convenience and necessity — Application and fees.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-220. Certificate of public convenience and necessity — Issuance — Notice and hearing.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-221. Certificate of public convenience and necessity — Terms and conditions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-222. Permits for contract carriers — Requirement.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-223. Permits for contract carriers — Application and fees.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-224. Permits for contract carriers — Issuance.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-227. Certificates and permits — Security for the protection of the public.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-228. Certificate or permit for interstate or foreign commerce — Disposition of funds.

It is declared unlawful for any motor carrier to use any of the public highways of this state for the transportation of persons or property in interstate commerce unless there is in force with respect to the carrier adequate surety for the protection of the public.

History. Acts 1955, No. 397, § 25; 1977, No. 468, § 1; A.S.A. 1947, § 73-1778; Acts 1993, No. 1027, § 1; 2007, No. 232, § 3.

A.C.R.C. Notes. Acts 2007, No. 232, § 1, provided: "Findings. It is found by the General Assembly that the United States Congress has enacted the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., replacing the single state registration system with the Unified Carrier Registration Agreement. In order to fully implement the requirements of the Unified Carrier Registration Act of 2005 the amendments to the Arkansas Code in this act are necessary."

Amendments. The 2007 amendment deleted the subsection (a) designation and deleted former (b), (c), (d), (e) and (f); and deleted "on file with the State Highway

Commission or the base state of the motor carrier" at the end of the section.

23-13-229. Temporary authority.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-230. Brokers — Licenses — Rules and regulations for protection of public.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-232. Certificates, permits, and licenses — Transfer, assignment, etc.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-233. Certificates, permits, and licenses — Amendment, revocation, and suspension.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-234. Operation without certificate or permit prohibited — Violation of terms, conditions, etc., of certificate, permit, or license prohibited.

(a)(1) Any motor carrier using the highways of this state without first having obtained a permit or certificate from the Arkansas Transportation Commission [abolished], as provided by this subchapter, or who, being a holder thereof, violates any term, condition, or provision thereof shall be subject to a civil penalty to be collected by the commission, after notice and hearing, in an amount not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

(2) If the penalty is not paid within ten (10) days from the date of the order of the commission assessing the penalty, twenty-five percent (25%) thereof shall be added to the penalty.

(3) Any amounts collected from the penalties provided for under this subsection shall be deposited by the commission into the State Treasury to the credit of the General Revenue Fund Account of the State Apportionment Fund.

(b)(1) Any person required by this subchapter to obtain a certificate of convenience and necessity as a common carrier or a permit as a contract carrier and operates as such a carrier without doing so shall be guilty of a violation. Upon conviction, he or she shall be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for the first such offense and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense.

(2) Each day of the violation shall be a separate offense.

(c)(1) Any person violating any other provision or any term or condition of any certificate, permit, or license, except as otherwise provided in § 23-13-258, shall be guilty of a violation and upon conviction shall be fined not more than one hundred dollars ($100) for the first offense and not more than five hundred dollars ($500) for any subsequent offense.

(2) Each day of the violation shall constitute a separate offense.

(3) In addition thereto, the person shall be subject to the civil penalties provided in subsection (a) of this section.

History. Acts 1955, No. 397, § 22; 1971, No. 532, § 1; 1983, No. 565, § 5; A.S.A. 1947, § 73-1775; Acts 2005, No. 1994, § 148.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

23-13-238. Common carriers — Rates, fares, rules, regulations, etc. — Complaints.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-239. Common carriers — Rates, fares, rules, regulations, etc. — Determination by commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-240. Common carriers — Rates, charges, rules, regulations, etc. — Establishment and division of joint rates, charges, etc.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-241. Common carriers — Schedules, rules, etc., affecting rates, fares, etc. — Hearings — Suspension proceedings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-242. Common carriers — Rates, charges, rules, regulations, etc. — Factors of reasonableness or justness.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-244. Tariffs of common carriers by motor vehicle.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-245. Contract carriers — Schedule of minimum rates and charges, rules, regulations, and practices — Requirement — Filing, posting, and publishing required.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-246. Contract carriers — Schedule of minimum rates and charges, rules, regulations, and practices — Adherence to schedule required — Exceptions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-249. Contract carriers — Schedule of rules, etc., affecting rates, fares, etc. — Hearings — Suspension proceedings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-250. Contract carriers — Schedule of minimum rates and charges, rules, regulations, and practices — Establishment by Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-251. Collection of rates and charges.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-252. Receipts or bills of lading.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-253, 23-13-254. [Repealed.]

Publisher's Notes. These sections, concerning reports by motor carriers and failure to file said reports, were repealed by Acts 2003, No. 1117, §§ 1, 2. The sections were derived from the following sources:

23-13-253. Acts 1955, No. 397, § 20; A.S.A. 1947, § 73-1773.

23-13-254. Acts 1955, No. 397, § 22; A.S.A. 1947, § 73-1775.

23-13-257. Violations by carriers, shippers, brokers, etc., or employees, agents, etc. — Penalties.

Any person, whether a carrier, shipper, consignee, or broker, or any officer, employee, agent, or representative thereof who shall knowingly offer, grant, or give or solicit, accept, or receive any rebate, concession, or discrimination in violation of any provision of this subchapter; who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device shall knowingly assist, suffer, or permit any persons, natural or artificial, to obtain transportation of passengers or property subject to this subchapter for less than the applicable fare, rate, or charge; who shall knowingly by any such means or otherwise fraudulently seek to evade or defeat regulation as in this subchapter is provided for motor carriers or brokers; or who shall violate any of the regulations, including safety regulations, prescribed or hereafter prescribed by the State Highway Commission pursuant to the provisions of Title 23 of this Code, shall be guilty of a violation. Upon conviction, that person, unless otherwise provided in this chapter, shall be fined not more than five hundred dollars ($500) for the first offense and not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000) for any subsequent offense.

History. Acts 1955, No. 397, § 22; A.S.A. 1947, § 73-1775; Acts 1993, No. 1023, § 1; 2005, No. 1994, § 455.

23-13-258. Operation of motor vehicle while in possession of, consuming, or under influence of any controlled substance or intoxicating liquor prohibited.

(a)(1) Any person operating or being in physical control of a motor vehicle, which motor vehicle is susceptible at the time of such operation or physical control to any regulations of the State Highway Commission regarding the safety of operation and equipment of that motor vehicle, who commits any of the following acts shall be guilty of a violation and upon conviction for the first offense shall be subject to a fine of not less than two hundred dollars ($200) nor more than one thousand dollars ($1,000):

(A) Operating or being in physical control of such a motor vehicle if he or she possesses, is under the influence of, or is using any controlled substance;

(B) Operating or being in physical control of such a motor vehicle if he or she possesses, is under the influence of, or is using any other substance that renders him or her incapable of safely operating a motor vehicle; or

(C)(i) Consumption of or possession of an intoxicating liquor, regardless of its alcoholic content, or being under the influence of an intoxicating liquor while in physical control of such a motor vehicle.

(ii) However, no person shall be considered in possession of an intoxicating liquor solely on the basis that an intoxicating liquor or beverage is manifested and being transported as part of a shipment.

(2) Upon the second and subsequent convictions, that person shall be subject to a fine of not less than five hundred dollars ($500) nor more than one thousand dollars ($1,000).

(b) As used in this section, "controlled substance" shall have the same meaning ascribed to that term in the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-608, and the regulations issued pursuant to that act.

(c) Nothing in this section is intended to abrogate any of the provisions of the Omnibus DWI Act, § 5-65-101 et seq., and any person violating any of the provisions of subsection (a) of this section who may be charged with a violation of the Omnibus DWI Act, § 5-65-101 et seq., shall be so charged with a violation of that act rather than with a violation of this section.

History. Acts 1955, No. 397, § 22; 1971, No. 532, § 1; A.S.A. 1947, § 73-1775; Acts 1993, No. 1022, § 1; 2005, No. 1994, § 149.

23-13-259. Lessor to unauthorized persons deemed motor carrier.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-261. Injunction against violation of subchapter, rules, regulations, etc., or terms and conditions of certificate, permit, or license.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-262. Actions to recover penalties.

(a) An action to recover a penalty under §§ 23-13-234 and 23-13-257 — 23-13-264 or to enforce the powers of the Arkansas Transportation Commission [abolished] under this subchapter or any other law may be brought in any circuit court in this state in the name of the State of Arkansas, on relation to the commission, and shall be commenced and prosecuted to final judgment by the counsel to the commission.

(b) In any such action, all penalties incurred up to the time of commencing the action may be sued for and recovered therein.

(c) The commencement of an action to recover a penalty shall not be or be held to be a waiver of the right to recover any other penalty.

History. Acts 1955, No. 397, § 22; 1983, No. 565, § 5; A.S.A. 1947, § 73-1775; Acts 2003, No. 1117, § 3.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

23-13-264. Disposition of forfeited bonds and fines.

One-half (½) of the amount of forfeited bonds and one-half (½) of the fines collected for violations of this subchapter shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the General Revenue Fund Account of the State Apportionment Fund.

History. Acts 1955, No. 397, § 22; 1983, No. 565, § 6; A.S.A. 1947, § 73-1775; Acts 2005, No. 1934, § 15.

Subchapter 3 — Complaint Proceedings

23-13-301. Definitions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-302. Authority of Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-303. Commencement of action before the commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-304. Service of process and notices.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-305. Time and place of hearing.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-306. Findings and order of commission — Time for taking effect.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-307. Revocation of license, permit, or certificate.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-308. Appeal to Circuit Court of Pulaski County.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-309. Order or subpoena of commission enforceable upon application to court.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-13-310. Witness fees and costs.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 4 — Passengers

SECTION.
23-13-401 — 23-13-406. [Repealed.]

23-13-401 — 23-13-406. [Repealed.]

Publisher's Notes. This subchapter was repealed by Acts 2005, No. 1994, § 574. The subchapter was derived from the following sources:

23-13-401. Acts 1959, No. 81, § 4; A.S.A. 1947, § 73-1783.

23-13-402. Acts 1959, No. 81, § 4; A.S.A. 1947, § 73-1783.

23-13-403. Acts 1959, No. 81, § 1; A.S.A. 1947, § 73-1780.

23-13-404. Acts 1959, No. 81, §§ 1, 2; A.S.A. 1947, §§ 73-1780, 73-1781.

23-13-405. Acts 1959, No. 81, § 3; A.S.A. 1947, § 73-1782.

23-13-406. Acts 1937, No. 124, § 5; Pope's Dig., § 6925; Acts 1943, No. 180, § 5; 1973, No. 253, § 2; A.S.A. 1947, § 73-1751.

Subchapter 5 — Motorcoach Carrier Incentive Program

SECTION.
23-13-501 — 23-13-506. [Repealed.]

Effective Dates. Acts 2009, No. 1330, § 35: July 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2009 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 2009 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2009."

23-13-501 — 23-13-506. [Repealed.]

Publisher's Notes. Former §§ 23-13-501 — 23-13-505, concerning the legislative determination, definitions, and application for and amount of incentive payments in the Motorcoach Carriers Incentive Act of 1997, were repealed by Acts 1999, No. 233, § 7. They were derived from the following sources:

23-13-501. Acts 1997, No. 1187, § 1.

23-13-502. Acts 1997, No. 1187, § 2.

23-13-503. Acts 1997, No. 1187, § 3.

23-13-504. Acts 1997, No. 1187, § 4.

23-13-505. Acts 1997, No. 1187, § 5.

This subchapter, concerning the Motorcoach Incentive Act of 1999, was repealed by Acts 2009, No. 1330, § 32. The subchapter was derived from the following sources:

23-13-501. Acts 1999, No. 233, § 1.

23-13-502. Acts 1999, No. 233, § 2.

23-13-503. Acts 1999, No. 233, § 3.

23-13-504. Acts 1999, No. 233, § 4.

23-13-505. Acts 1999, No. 233, § 5.

23-13-506. Acts 1997, No. 1187, § 6; 1999, No. 233, § 6.

Subchapter 6 — Registration of Motor Carriers Engaged In Interstate Commerce

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A.C.R.C. Notes. Acts 2007, No. 232, § 1, provided: "Findings. It is found by the General Assembly that the United States Congress has enacted the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., replacing the single state registration system with the Unified Carrier Registration Agreement. In order to fully implement the requirements of the Unified Carrier Registration Act of 2005 the amendments to the Arkansas Code in this act are necessary."

Effective Dates. Acts 2007, No. 232, § 4: Mar. 9, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in August 2005 the United States Congress enacted the Uniform Carrier Registration Act of 2005; that the Uniform Carrier Registration Act of 2005 is to replace the single state registration program on or before January 1, 2007; that the deadline has passed and Arkansas has not yet had an opportunity to respond to this law due to its biennial legislative sessions; and that there is an immediate need for implementation of the provisions of this act to ensure that Arkansas is in compliance with the Uniform Carrier Registration Act of 2005 to prevent the loss of funding. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-13-601. Definitions.

As used in this subchapter:

(1) "Broker" means a person other than a motor carrier or an employee or agent of a motor carrier that as a principal or an agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for transportation by motor carrier for compensation;

(2) "Commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo if the vehicle:

(A) Has a gross vehicle weight rating or gross vehicle weight of at least ten thousand one pounds (10,001 lbs.), whichever is greater;

(B) Is designed to transport more than ten (10) passengers including the driver; or

(C) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. § 5103, as it existed on January 1, 2007, and transported in a quantity requiring placarding under regulations prescribed by the secretary under 49 U.S.C. § 5103, as it existed on January 1, 2007;

(3) "Freight forwarder" means a person holding itself out to the general public other than as a pipeline, rail, motor, or water carrier to provide transportation of property for compensation and in the ordinary course of its business:

(A) Assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) Assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C)(i) Uses for any part of the transportation a carrier subject to jurisdiction under 49 U.S.C. § 10101 et seq., as it existed on January 1, 2007.

(ii) "Freight forwarder" does not include a person using transportation of an air carrier subject to 49 U.S.C. § 40101 et seq., as it existed on January 1, 2007;

(4) "Leasing company" means a lessor that is engaged in the business of leasing or renting for compensation motor vehicles without drivers to a motor carrier, motor private carrier, or freight forwarder;

(5) "Motor carrier" means a person providing commercial motor vehicle transportation for compensation; and

(6) "Motor private carrier" means a person other than a motor carrier transporting property by commercial motor vehicle when:

(A) The transportation is interstate commerce as provided in 49 U.S.C. § 13501, as it existed on January 1, 2007;

(B) The person is the owner, lessee, or bailee of the property being transported; and

(C) The property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

History. Acts 2007, No. 232, § 2.

23-13-602. Registration with a base state required.

Foreign and domestic motor carriers, motor private carriers, leasing companies, brokers, and freight forwarders shall not operate in interstate commerce in this state without:

(1) Being registered with a base state; and

(2) Paying all fees as required under the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 3.

Amendments. The 2009 amendment added the subsection designations, deleted "as in effect on January 1, 2007" following "et seq." in (2), and made related changes.

23-13-603. Implementation and administration duties.

(a) The Director of the Department of Finance and Administration has oversight over the implementation and administration of the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq.

(b) The director is vested with the following powers and has the following duties:

(1) To promulgate such regulations as are necessary to participate in the Unified Carrier Registration Agreement;

(2) To collect and remit such fees as determined by the Unified Carrier Registration Plan Board of Directors;

(3) To cooperate with the various law enforcement agencies to ensure compliance with and enforcement of the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., and regulations; and

(4) To do all things necessary, pursuant to the state and federal law, to enable this state to participate in the Unified Carrier Registration Agreement.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 4.

Amendments. The 2009 amendment, in (b)(3), deleted "as in effect on January 1, 2007" following "et seq." and made a related change and a minor stylistic change.

23-13-604. Registration fees.

(a) Any fees collected by the Director of the Department of Finance and Administration under this section shall be classified as special revenues and shall be deposited into the State Treasury.

(b) Upon receipt of the funds and if not prohibited by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., the Treasurer of State shall:

(1) Deduct three percent (3%) of the funds as a charge by the state for its services as specified in this section; and

(2) Credit the three percent (3%) to the Constitutional Officers Fund and the State Central Services Fund, as defined in the Revenue Classification Law, § 19-6-101 et seq., or to any successor State Treasury fund or funds established by law to replace the Constitutional Officers Fund and the State Central Services Fund.

(c) The net amount of the fees collected by the director under this section shall be:

(1) Transferred by the Treasurer of State on the last business day of each month to the State Highway and Transportation Department Fund; and

(2) Distributed and expended in the manner directed by the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., for

the payment of expenses incurred by the Arkansas State Highway and Transportation Department for motor carrier law enforcement and safety operations.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 5.

Amendments. The 2009 amendment redesignated (b) and (c); deleted "as in effect on January 1, 2007" following "et seq." in the introductory language of (b); inserted "§ 4301 et seq." in (c)(2); and made related changes.

23-13-605. Violation — Enforcement — Penalties.

(a)(1) A person who is subject to the Unified Carrier Registration Act of 2005, Pub. L. No. 109-59, § 4301 et seq., and who uses the highways of this state without first registering in accordance with this subchapter is guilty of a violation.

(2) The Department of Arkansas State Police, the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department, and local authorities may enforce this subsection.

(b) A person who is found guilty or enters a plea of guilty or nolo contendere under this section shall be ordered to pay a fine of:

(1) For a first offense, not less than one hundred dollars ($100) or more than five hundred dollars ($500); and

(2) For a second or subsequent offense, not less than one hundred dollars ($100) or more than one thousand dollars ($1,000).

(c)(1) Fifty percent (50%) of the amount of the fines imposed and collected under this section shall be remitted by the tenth day of each month to the Administration of Justice Funds Section of the Office of Administrative Services of the Department of Finance and Administration on a form provided by that office for deposit into the General Revenue Fund Account of the State Apportionment Fund.

(2) Fifty percent (50%) of the amount of the fines imposed and collected under this section shall remain in the jurisdiction in which the violation occurred.

History. Acts 2007, No. 232, § 2; 2009, No. 164, § 6.

Amendments. The 2009 amendment redesignated the section; deleted "as in effect on January 1, 2007" following "et seq." in (a)(1), and substituted "this subsection" for "subsection (a) of this section" in (a)(2); and made related changes.

CHAPTER 14

AIR COMMERCE REGULATIONS

SECTION.

23-14-102. Definitions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-103. Exemptions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-104. Penalties.

(a) Every person, including any officer, agent, or employee of a corporation, who violates any provision of this chapter or fails to comply with any order, decision, or regulation issued by the Arkansas Transportation Commission [abolished] shall be guilty of a Class A misdemeanor.

(b) Each day's violation of this chapter or any of the terms or conditions of any such order, decision, or regulation shall constitute a separate offense.

History. Acts 1945, No. 252, § 18; A.S.A. 1947, § 74-419; Acts 2005, No. 1994, § 326.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

Amendments. The 2005 amendment inserted the subsection (a) and (b) designations; in (a), deleted "procures, aids, or abets in the violation of" following "who violates" and substituted "Class A misdemeanor" for "misdemeanor and upon conviction shall be punishable by a fine of not to exceed one thousand dollars ($1,000) or by imprisonment in the county jail not to exceed one (1) year, or both."

23-14-106. Control, supervision, and regulation by Arkansas Transportation Commission [abolished].

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State

Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-107. Duties and powers of commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-108. Pecuniary interest by commissioners or employees prohibited.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-109. Certificates required.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-110. Certificates — Application — Notice and hearings.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-111. Temporary certificates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-112. Certificates — Security for the protection of the public required.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-113. Certificates — Evidence of compliance with other laws required.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-114. Issuance of certificates.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-116. Certificates — Transfer or lease.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-117. Certificates — Modification, suspension, or revocation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-118. Rates and service generally.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-119. Extension of service.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-120. Abandonment or discontinuance of service.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-121. Tariffs.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-122. Free or reduced-rate transportation.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-123. Change in tariff, charge, rule, regulation, etc. — Approval by commission.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-124. Regulation of securities and liens — Liability of state.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-125. Accounts, records, and reports.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However,

Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-126. Access to and examination of property and records.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-14-128. Fees.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

CHAPTER 15

PIPELINE COMPANIES

SUBCHAPTER.

2. Arkansas Natural Gas Pipeline Safety Act of 1971.

Subchapter 1 — General Provisions

23-15-101. Common carriers — Eminent domain.

CASE NOTES

Constitutionality.

This section was constitutional as applied and did not violate Ark. Const. Art. 2, § 22, where it granted a private gas company the right of eminent domain to construct and maintain a natural gas pipeline over private land and the gas company operated the pipeline as a common carrier, giving the public the equal right to use the pipeline. Linder v. Ark. Midstream Gas Servs. Corp., 2010 Ark. 117, — S.W.3d — (2010).

This section did not violate Ark. Const. Art. 2, § 22 because it had not granted the power of eminent domain to a pipeline company for a private use; the pipeline was available to multiple natural gas producers and was to be operated by the pipeline company as a common carrier so that the public had equal rights to its use.

Smith v. Ark. Midstream Gas Servs. Corp., 2010 Ark. 256, — S.W.3d — (2010).

23-15-103. Gas rates.

CASE NOTES

Cited: Brandon v. Arkansas W. Gas Co., 76 Ark. App. 201, 61 S.W.3d 193 (2001).

23-15-105. Pipeline companies authorized to transport ammonia and other components of fertilizer.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 2 — Arkansas Natural Gas Pipeline Safety Act of 1971

23-15-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Public Service Commission;

(2) "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive;

(3) "Interstate transmission facilities" means pipeline facilities used in the transportation of gas which are subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act;

(4) "Municipality" means a city, county, or any other political subdivision of a state;

(5) "Person" means an individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(6) "Petroleum refinery" means an industrial or manufacturing facility or plant primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the processing of petroleum crude oil that is subject to:

(A) The Environmental Protection Agency Standards of Performance for New Stationary Sources set forth in 40 C.F.R. Part 60, Subpart GGG or successor regulations;

(B) The Environmental Protection Agency Chemical Accident Prevention Provisions set forth in 40 C.F.R. Part 68, Subparts A, B, D, E, F, G, and H or successor regulations; and

(C) The Occupational Safety and Health Administration Regulations governing process safety management of highly hazardous chemicals set forth in 29 C.F.R. § 1910.119 or successor regulations;

(7) "Pipeline facilities" includes, without limitation, pipe, pipe rights-of-way, and any equipment facility or building used in the transportation of gas or the treatment of gas during the course of transportation of gas, but rights-of-way as used in this subchapter does not authorize the commission to prescribe the location or routing of any pipeline facility;

(8) "Production facilities" includes, without limitation, piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treatment of natural gas or associated storage or measurement from the wellhead to a meter where the gas is transferred to a custodian other than the well operator for gathering or transport, commonly known as a "custodial transfer meter";

(9) "Production process" means the extraction of gas from the geological source of supply to the surface of the earth, thence through the lines and equipment used to treat, compress, and measure the gas between the wellhead and the meter where it is either sold or delivered to a custodian other than the well operator for gathering and transport to a place of sale, sometimes called a "custodial transfer meter"; and

(10)(A) "Transportation of gas" means the gathering, transmission, or distribution of gas by pipeline or the storage of gas in or through any pipeline facilities other than interstate transmission facilities as defined in this section.

(B) "Transportation of gas" shall not include production facilities or the production process.

(C) "Transportation of gas" shall include the gathering, transmission, or distribution of natural gas containing one hundred (100) or more parts per million of hydrogen sulfide from the custodial transfer meter through any pipeline, rural or nonrural, to and through any pipeline facility that removes hydrogen sulfide, except that portion of such a pipeline or pipeline facility that is located within the fenced boundary of a petroleum refinery.

History. Acts 1971, No. 285, § 2; A.S.A. 1947, § 73-1909; Acts 1991, No. 793, § 2; 1999, No. 1048, § 1; 2001, No. 153, § 1; 2009, No. 452, § 2.

Amendments. The 2009 amendment, in (10(A), substituted "the" for "its" and inserted "of gas"; deleted (10)(B)(ii), substituted "'Transportation of gas' shall" for "However, it shall specifically" in (10)(C); and made related and minor stylistic changes.

23-15-205. Safety standards.

(a) The Arkansas Public Service Commission by order pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for purposes of this subchapter only may promulgate, amend, enforce, waive, and repeal minimum safety standards for the transportation of gas and pipeline facilities.

(b)(1) These standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities.

(2) The state safety standards shall be practicable and designed to meet the needs for pipeline safety.

(c) In prescribing the safety standards, the commission shall consider:

(1) Relevant available pipeline safety data;

(2) Whether such standards are appropriate for the particular type of pipeline transportation;

(3) The reasonableness of any proposed standard; and

(4) The extent to which such standards will contribute to the public safety.

(d) Safety regulations promulgated for gas pipeline facilities or the transportation of gas shall be consistent with federal law and with rules and regulations promulgated under authority of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, as amended.

(e) Standards affecting the design, installation, construction, initial inspection, and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted.

(f) Whenever the commission finds a particular facility to be hazardous to life or property, it shall be empowered to require the person operating the facility to cease such operation or to take steps necessary to remove the hazards.

History. Acts 1971, No. 285, § 3; A.S.A. 1947, § 73-1910; Acts 1991, No. 793, § 3; 1999, No. 1048, § 2.

23-15-209. Compliance and waiver.

(a) Each person who engages in the transportation of gas or who owns or operates pipeline facilities shall:

(1) At all times after the date any applicable safety standard established under this subchapter takes effect, comply with the requirements of such standard;

(2) File and comply with a plan of inspection and maintenance required by § 23-15-208; and

(3) Permit access to or copying of records, make reports or provide information, and permit entry or inspection, as required under §§ 23-15-206 and 23-15-207.

(b) The Arkansas Public Service Commission, pursuant to the provisions of the Natural Gas Pipeline Safety Act of 1968, Pub. L. No. 90-481, may waive compliance with a safety standard.

History. Acts 1971, No. 285, § 5; A.S.A. 1947, § 73-1912.

23-15-211. Civil penalty — Compromise — Proceedings.

(a) Any person who violates any provision of § 23-15-209 or any regulation issued under this subchapter shall be subject to a civil penalty not to exceed one hundred thousand dollars ($100,000) for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed one million dollars ($1,000,000) for any related series of violations.

(b) Any such civil penalty may be compromised by the Arkansas Public Service Commission.

(c) In determining the amount of the penalty or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered.

(d) Proceedings under this section shall be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) Any penalty imposed under this section, if not promptly paid to the commission, shall be recovered with interest thereon from the date of the order in a civil action brought by the commission.

(f) Any civil penalty collected and imposed under this section shall be paid to the Secretary of the Arkansas Public Service Commission.

History. Acts 1971, No. 285, §§ 6, 8; 1975, No. 877, § 2; A.S.A. 1947, §§ 73-1913, 73-1915; Acts 1991, No. 793, § 4; 1995, No. 713, § 1; 2005, No. 539, § 1.

CHAPTER 16

MISCELLANEOUS PROVISIONS RELATING TO CARRIERS

SUBCHAPTER.

2. Employee Bonds.
4. Arkansas Lifeline Individual Verification Effort Corporation Act.
5. Safe Transportation of Railroad Employees by Contract Carriers Act.

Subchapter 1 — General Provisions

23-16-101. Definitions.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153,

§§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-16-103. Annual certified statement of gross revenue.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-16-104. Annual fee collected from carriers.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

23-16-106. Record of cost of operation kept.

Publisher's Notes. The Arkansas Transportation Commission, referred to in this section, was abolished and replaced by the Transportation Regulatory Board and the Transportation Safety Agency pursuant to Acts 1987, No. 572. However, Acts 1989 (1st Ex. Sess.), No. 67, § 23, and Acts 1989 (1st Ex. Sess.), No. 153, §§ 2, 3, abolished the board and the agency and transferred their powers, functions, and duties to the State Highway Commission and the Arkansas State Highway and Transportation Department, respectively. See Publisher's Notes to Chapter 2, Subchapter 2 of this title.

This note is being set out to correct an agency name.

Subchapter 2 — Employee Bonds

SECTION.

23-16-201. Penalty.

Any person, officer, manager, company, corporation, association, or firm who violates any of the provisions of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 1911, No. 166, § 4; C. & M. Dig., § 7124; Pope's Dig., § 9110; A.S.A. 1947, § 73-2104; Acts 2005, No. 1994, § 229.

Subchapter 4 — Arkansas Lifeline Individual Verification Effort Corporation Act

23-16-401. Title.

This subchapter shall be known and may be cited as the "Arkansas Lifeline Individual Verification Effort Corporation Act".

History. Acts 2005, No. 2289, § 1.

23-16-402. Definitions.

As used in this subchapter:

(1) "Eligible telecommunications carrier" has the same meaning as provided in § 23-17-403;

(2) "Lifeline Assistance Program" means the federally mandated Lifeline Assistance Program that provides certain discounts on monthly service for qualified telephone subscribers; and

(3) "Link Up America" means the federally mandated Link Up America program through the Federal Communications Commission that helps qualified low-income consumers to connect or hook up to the telephone network.

History. Acts 2005, No. 2289, § 1.

23-16-403. Arkansas Lifeline Individual Verification Effort Corporation — Creation — Board of directors.

(a) There is created the Arkansas Lifeline Individual Verification Effort Corporation.

(b) The corporation shall be governed by a seven-member board of directors appointed by the Governor as follows:

(1) Three (3) board members shall be consumers; and

(2) Four (4) board members shall be representatives of eligible telecommunications carriers.

(c) The Governor shall choose representatives of eligible telecommunications carriers from a list of three (3) names for each position submitted by representatives of eligible telecommunications carriers.

(d) The initial appointments shall be for terms that will result in two (2) board members serving a one-year term, two (2) board members serving a two-year term, and three (3) board members serving a three-year term. All successors shall serve three-year terms.

(e) The Governor shall designate one (1) of the board members to preside over the initial meeting of the board, at which meeting the board shall elect a president, a secretary, and such other officers as it deems appropriate.

(f) Members of the board shall serve without compensation but may be reimbursed for reasonable expenses. However, no corporate money shall be used for out-of-state travel expenses.

(g) All vacancies on the board shall be filled in the same manner as the original appointments.

History. Acts 2005, No. 2289, § 1.

23-16-404. Board of directors — Attendance at meetings required.

(a) In order to ensure broad representation and a quorum, all members of the Board of Directors of the Arkansas Lifeline Individual Verification Effort Corporation have a responsibility to attend all regular or special meetings of the board.

(b)(1) A board member shall be subject to removal from the board if the member fails to present to the Governor a satisfactory excuse for his or her absence.

(2) Unexcused absences from three (3) successive regular meetings without attending any intermediary called special meetings shall constitute sufficient cause for removal.

(c) Removal of board members shall be in accordance with the following:

(1)(A) Within thirty (30) days after each regular board meeting, the secretary of the board shall give written notice to the Governor of any member who has been absent from three (3) successive regular meetings without attending any intermediary called special meetings.

(B) The secretary's notice to the Governor shall include a copy of all meeting notices and attendance records for the past year.

(C) Failure by the secretary to submit the notices and documentation required by this subchapter shall be considered cause for removal by the Governor in accordance with the procedures set forth at § 25-17-210;

(2) Within sixty (60) days after receiving the notice and supporting documentation from the secretary, the Governor shall notify the board member in writing of the Governor's intent to remove the member for cause. This notice shall suffice for the notice required in § 25-17-210(a);

(3) Within twenty (20) days after the date of the Governor's notice, the board member may request an excused absence as provided by this

subchapter or may file notice with the Governor's office that the member disputes the attendance records and the reasons therefor;

(4) The Governor shall grant an excuse for illness of the member when verified by a written sworn statement by the attending physician or other proper excuse as determined by the Governor; and

(5) If no rebuttal is received or other adequate documentation submitted within twenty (20) days after the date of the Governor's notice, the board member may be removed in accordance with the provisions set forth in § 25-17-210.

(d) Any board member referred to the Governor because of excessive absences under the provisions of this subchapter shall not be entitled to any expense reimbursement for travel to or attendance at any subsequent meeting until the board receives notification from the Governor that the member has been excused for the absences.

History. Acts 2005, No. 2289, § 1.

23-16-405. Assessment on eligible telecommunications carriers.

(a)(1) The Board of Directors of the Arkansas Lifeline Individual Verification Effort Corporation shall levy assessments on all eligible telecommunications carriers participating in the verification program not to exceed ten cents (10¢) per subject access line per month in order to fund the services provided by the Arkansas Lifeline Individual Verification Effort Corporation.

(2) Participation in the verification program shall be available only for eligible telecommunications carriers having a customer access base of fifteen thousand (15,000) or fewer.

(b) The board may adjust the assessment in January of each year, but at no time shall the assessment exceed ten cents (10¢) per subject access line per month.

(c) The assessment shall not be levied on more than one hundred (100) access lines at any single customer location.

(d)(1) The assessment may be collected by an eligible telecommunications carrier from its customers and transmitted monthly to the board, and the board shall deposit the assessment into a financial institution authorized to accept public funds.

(2) The assessment shall appear on the bills of customers as a combined total with the assessment by the Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation under § 25-29-103. The item on the bill shall identify both assessments by name.

(e) The assessments levied by the corporation shall not be considered a tax and shall not be affected by any laws of this state governing taxation, nor shall the assessments be subject to any state or local tax or franchise fee.

History. Acts 2005, No. 2289, § 1.

23-16-406. Option to participate or cease participation.

(a) An eligible telecommunications carrier may elect not to participate under this subchapter without the need for approval by the Arkansas Lifeline Individual Verification Effort Corporation if the eligible telecommunications carrier files notice with the corporation within one hundred twenty (120) days after August 12, 2005.

(b)(1) If approved by the corporation:

(A) A participating eligible telecommunications carrier may cease participation under this subchapter; and

(B) A nonparticipating eligible telecommunications carrier may begin participation under this subchapter.

(2) Applications to participate or cease participation shall be accepted at times approved by the Board of Directors of the Arkansas Lifeline Individual Verification Effort Corporation.

History. Acts 2005, No. 2289, § 1.

23-16-407. Powers and duties of corporation.

(a)(1) The Arkansas Lifeline Individual Verification Effort Corporation shall provide services to verify eligibility under the Lifeline Assistance Program for individuals for whom other governmental entities do not verify the data. If another governmental entity provides verification, the corporation shall not duplicate the verification.

(2) The corporation may provide services to verify eligibility under the Link Up America program for individuals for whom other governmental entities do not verify the data. If another governmental entity provides verification, the corporation shall not duplicate the verification.

(b) The corporation shall:

(1) Have perpetual succession as a body politic and corporate, adopt bylaws for the regulation of the affairs and the conduct of its business, and prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) Adopt an official seal and alter it at pleasure;

(3) Sue and be sued in its own name and plead and be impleaded;

(4) Make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the authority under this subchapter, including contracts with persons, firms, corporations, and others;

(5) Purchase insurance; and

(6) Do all other acts and things necessary, convenient, or desirable to carry out the purposes of this subchapter and to exercise the powers granted to it by this subchapter.

History. Acts 2005, No. 2289, § 1.

23-16-408. Staff — Real property — Debt.

(a) The Arkansas Lifeline Individual Verification Effort Corporation shall not employ any person as a salaried employee but shall rely upon volunteers and professional services obtained by contract.

(b) No corporate asset may be used to purchase or lease any real property, nor is the corporation authorized to incur any indebtedness.

History. Acts 2005, No. 2289, § 1.

23-16-409. Corporate offices.

The Arkansas Lifeline Individual Verification Effort Corporation may maintain an office at such location as it deems suitable.

History. Acts 2005, No. 2289, § 1.

23-16-410. Annual audit.

The Arkansas Lifeline Individual Verification Effort Corporation shall be audited annually in accordance with accounting principles generally accepted in the United States and file a copy of the audit with the Legislative Joint Auditing Committee and the Arkansas Public Service Commission.

History. Acts 2005, No. 2289, § 1.

23-16-411. Articles of incorporation.

Within thirty (30) days after the first meeting of the Board of Directors of the Arkansas Lifeline Individual Verification Effort Corporation, the board shall cause articles of incorporation to be filed with the Secretary of State.

History. Acts 2005, No. 2289, § 1.

23-16-412. Purchase of telecommunications services.

The purchase of verification services by the Arkansas Lifeline Individual Verification Effort Corporation shall be by competitive bid using procedures substantially similar to the Arkansas Procurement Law, § 19-11-201 et seq.

History. Acts 2005, No. 2289, § 1.

23-16-413. Annual report.

The Board of Directors of the Arkansas Lifeline Individual Verification Effort Corporation shall transmit an annual report of its activities to the Legislative Council, the Governor, and the Arkansas Public Service Commission. The annual report shall be filed by March 31 of each year.

History. Acts 2005, No. 2289, § 1.

Subchapter 5 — Safe Transportation of Railroad Employees by Contract Carriers Act

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Effective Dates. Acts 2009, No. 243, § 2, Feb. 26, 2009. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that safety issues have arisen where the contract carrier that transports railroad employees have operated under less than ideal circumstances; that by establishing standards in state law that are consistent with federal law, railroad employees will be provided transportation that complies with recognized safety standards; and that this act is immediately necessary to ensure the safe transportation of railroad employees by contract carriers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-16-501. Title.

This subchapter shall be known as and may be cited as the "Safe Transportation of Railroad Employees by Contract Carriers Act".

History. Acts 2009, No. 243, § 1.

23-16-502. Definitions.

As used in this subchapter:

(1) "Contract carrier" means a passenger contract carrier that for compensation transports railroad employees with a vehicle designed or used to transport eight (8) persons or less, including the driver; and

(2)(A) "On-duty time" means all time at a terminal, facility, or other property of a contract carrier or on any public property waiting to be dispatched.

(B) "On-duty time" includes time spent inspecting, servicing, or conditioning the vehicle, unless the driver has been relieved from duty by the contract carrier.

History. Acts 2009, No. 243, § 1.

23-16-503. Driver qualification file.

(a)(1) A contract carrier shall maintain a driver qualification file for each driver it employs.

(2) The driver qualification file may be combined with the personnel file of the employee.

(b) The driver qualification file shall include:

(1) A certificate of physical examination conducted by a physician every two (2) years that certifies the physical ability of the driver to operate a commercial motor vehicle;

(2) Documentation that establishes that the driver's driving record has been reviewed at least one (1) time per year;

(3) Documentation related to the driver's violation of motor vehicle laws or ordinances, if applicable;

(4) Other documentation related to the driver's qualification or ability to drive a motor vehicle;

(5) The driver's application for employment as provided under 49 C.F.R. § 391.21;

(6) Responses from previous employers, if required by the current employer; and

(7) A certificate of the driver's road test or a copy of the current driver's license.

History. Acts 2009, No. 243, § 1.

23-16-504. Driver disqualification and limitations.

(a) A driver is disqualified from driving for a contract carrier under this subchapter if the driver has committed two (2) or more serious traffic violations under § 27-16-401 within a three-year period.

(b)(1) A contract carrier shall not allow or require a driver to drive or remain on duty for more than:

(A) Ten (10) hours after eight (8) consecutive hours off-duty;

(B) Fifteen (15) hours of combined on-duty time and drive time since last obtaining eight (8) consecutive hours of off-duty time; or

(C) Seventy (70) hours of on-duty and drive time in any period of eight (8) consecutive days.

(2) After twenty-four (24) hours off-duty, a driver begins a new seven (7) consecutive day period and on-duty time is reset to zero (0).

(3) A transport vehicle driver who encounters an emergency and cannot, because of that emergency, safely complete a transportation assignment within the ten-hour maximum driving time permitted under this section may drive and be permitted or required to drive a transport motor vehicle for not more than two (2) additional hours in order to complete that transportation assignment or to reach a place offering safety for the occupants of the transport motor vehicle and security for the transport motor vehicle if the transportation assignment reasonably could have been completed within the ten-hour period absent the emergency.

(c) A contract carrier shall maintain and retain for a period of six (6) months accurate time records that show:

(1) The time the driver reports for duty each day;

(2) The total number of hours of on-duty time for each driver for each day;

(3) The time the driver is released from duty each day; and

(4) The total number of hours driven each day.

History. Acts 2009, No. 243, § 1.

23-16-505. Driver testing.

(a)(1) Before a driver performs any duties for a contract carrier, the driver shall undergo testing for alcohol and controlled substances as provided under 49 C.F.R. § 40 and 49 C.F.R. § 382, as in effect on January 1, 2009.

(2) A driver is qualified to drive for a contract carrier if:

(A) The alcohol test result under subdivision (a)(1) of this section indicates an alcohol concentration of zero (0); and

(B) The controlled substances test result from the medical review officer as defined under 49 C.F.R. § 40.3, as in effect on January 1, 2009, indicates a verified negative test result.

(3) A driver is disqualified from driving for a contract carrier if:

(A) The alcohol test result and the controlled substances test result are not in compliance with subdivision (a)(2) of this section;

(B) The driver refuses to provide a specimen for an alcohol test result or the controlled substances test result, or both; or

(C) The driver submits an adulterated specimen, a diluted positive specimen, or a substituted specimen on an alcohol test result or the controlled substances test result that is performed.

(b)(1) As soon as practicable after an accident involving a motor vehicle owned or operated by a contract carrier, the contract carrier shall test each surviving driver for alcohol and controlled substances if:

(A) The accident involved the loss of human life; or

(B) The driver received a citation for a moving traffic violation arising from the accident and the accident involved:

(i) Bodily injury to a person who immediately received medical treatment after the accident; or

(ii) Disabling damage that required the motor vehicle to be towed from the accident scene to one (1) or more motor vehicles as a result of the accident.

(2) If alcohol testing and controlled substances testing cannot be completed as soon as possible but no later than thirty-two (32) hours after the accident, the records shall be submitted to the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.

(c)(1) A common carrier or the employer of a driver of a common carrier shall maintain records of the alcohol testing and controlled substances testing of drivers for five (5) years.

(2) The records shall be maintained in a secure location.

History. Acts 2009, No. 243, § 1.

23-16-506. Vehicle inspection.

(a) A contract carrier shall inspect or cause to be inspected a motor vehicle that it operates for passenger transportation.

(b)(1) If a contract carrier uses a commercial motor vehicle for passenger transportation, the contract carrier shall perform an inspection on the commercial motor vehicle and its components at least one (1) time in every twelve-month period in compliance with the rules promulgated by the United States Department of Transportation as provided under 49 C.F.R. § 396.17, Appendix G.

(2) The inspection under this subsection shall be performed by an individual who is qualified to perform the inspection as prescribed in 49 C.F.R. § 396.19, as in effect on January 1, 2009.

(c) A contract carrier shall require each of its drivers to complete a written motor vehicle report upon completion of each day's work on the motor vehicle that the driver operated as prescribed under 49 C.F.R. § 396.11, as in effect on January 1, 2009.

History. Acts 2009, No. 243, § 1.

23-16-507. Maintenance and repair program.

(a) A contract carrier shall establish a maintenance and repair program to include at least weekly inspections under this section.

(b) A contract carrier's maintenance and repair program shall include checking parts and accessories for safety and proper operation at all times, including the items under subsection (c) of this section, and overall cleanliness of the motor vehicle.

(c) A motor vehicle used by a contract carrier shall have:

(1) Tires with sufficient tread as prescribed under 49 C.F.R. § 393.75, as in effect on January 1, 2009;

(2) A spare tire that is fully inflated;

(3) A secured location for personal baggage, including proper restraints;

(4) Fully-operational seatbelts for all passenger seats;

(5) If the weather requires it, traction devices, studs, or chains;

(6) A heater and air conditioner that is properly working with properly working fans; and

(7) An emergency road kit that contains at least a tire inflating aerosol can, flares or reflective triangles, jumper cables, and a fire extinguisher.

(d) A motor vehicle shall not be operated in a condition that is likely to cause an accident or mechanical breakdown.

(e)(1) A contract carrier shall maintain records for its maintenance and repair program for each motor vehicle.

(2) The records shall include:

(A) Identifying information for the motor vehicle to include the vehicle identification number, make, year manufactured, and company identification number if one is provided;

(B) Owner information if the contract carrier is not the owner of the vehicle; and

(C) The history of inspections, repairs, and maintenance that describe the activity and the date the activity was performed.

(3)(A) Except as provided under subdivision (e)(3)(B) of this section, the records under this subsection shall be maintained by the contract carrier at its place of business for one (1) year.

(B) If the motor vehicle leaves the contract carrier's control, the records under this subsection shall be maintained by the contract carrier at its place of business for six (6) months.

(f) A contract carrier and its officers, drivers, agents, and employees who are concerned with the inspection or maintenance of motor vehicles shall comply with and be knowledgeable of the contract carrier's maintenance and repair program under this section.

History. Acts 2009, No. 243, § 1.

23-16-508. Access to facilities and records.

A contract carrier shall allow an employee of the Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department or its designee access to:

(1) A facility to determine compliance with this subchapter; and

(2) Records or information related to an accident investigation under this subchapter.

History. Acts 2009, No. 243, § 1.

23-16-509. Liability protection.

A contract carrier or a third party that contracts on behalf of a railroad shall obtain and maintain an insurance policy of five million dollars ($5,000,000) for each motor vehicle that transports railroad employees.

History. Acts 2009, No. 243, § 1; 2009, No. 637, § 1.

Amendments. The 2009 amendment inserted "or a third party that contracts on behalf of a railroad" and substituted "($5,000,000)" for "(5,000,000)."

23-16-510. Penalties.

(a)(1) A person who knowingly violates a provision of this subchapter is liable to the state for a civil penalty not to exceed one thousand dollars ($1,000) for each violation.

(2) Each day that a violation continues is a separate offense.

(b) The Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department shall assess penalties for violations under this subchapter by written notice to the violator.

(c) To determine the amount of the penalty, the department or its designee shall evaluate:

(1) The nature, circumstances, extent, and gravity of the violation;

(2) The degree of culpability, history of prior offenses, ability to pay, and effect on the ability to continue to do business of the person found to have committed a violation; and

(3) Other circumstances as justice may require.

History. Acts 2009, No. 243, § 1.

23-16-511. Right of railroad to contract.

(a) This subchapter is not intended to limit and shall not be construed as limiting the right of a railroad to contract with a contract carrier that certifies to the railroad that it is in compliance with the provisions of this subchapter or any applicable federal requirements.

(b) The railroad is entitled to rely on a contract carrier's certification that it is operating in compliance with this subchapter without further inquiry.

History. Acts 2009, No. 243, § 1.

CHAPTER 17

TELEPHONE AND TELEGRAPH COMPANIES

SUBCHAPTER.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2011, No. 173, § 3: July 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act provides for the creation of a surcharge upon commercial mobile radio service providers per subject telephone number per month to support the Telecommunications Equipment Fund, and that the optimal time to implement this surcharge is at the beginning of the state's fiscal year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2011."

23-17-101. Right to construct, operate, and maintain lines — Damages for occupation of property.

CASE NOTES

Cited: International Paper Co. v. MCI Worldcom Network Servs., 202 F. Supp. 2d 895 (W.D. Ark. 2002).

23-17-106. Priority of dispatch of messages — Confidentiality.

(a)(1) In consideration of the right-of-way over the public property conceded in §§ 23-17-101 — 23-17-108 and 23-17-113, every telephone corporation in the case of war, insurrection, or civil commotion of any kind and for the arrest of criminals shall give immediate dispatch at the usual rates of charge to any message connected therewith of any officer of the state or of the United States.

(2) Any officer or agent of a telephone company who fails or refuses to carry out the provisions of the preceding subsection is guilty of a misdemeanor.

(b)(1) All other messages, including those received from other telephone companies, shall be transmitted in order of their delivery, correctly and without unreasonable delay, and shall be strictly confidential. However, arrangements may be made with the publishers of newspapers for the transmission of intelligence of general and public interest.

(2) Any officer or agent of a telephone company who willfully violates the provisions of this subsection is guilty of a Class A misdemeanor.

(3) The telephone company so violating this section is liable in damages to the party aggrieved.

History. Acts 1885, No. 107, §§ 5-8, p. 176; C. & M. Dig., §§ 10242-10245; Pope's Dig., §§ 14251-14254; A.S.A. 1947, §§ 73-1806 — 73-1809; Acts 2005, No. 1994, § 204.

Amendments. The 2005 amendment deleted "telegraph or" preceding "telephone" throughout this section; and inserted "Class A" preceding "misdemeanor" in (b)(2).

23-17-107. Interception of message — Injuring equipment — Penalty.

If any person without authority intercepts a dispatch or message transmitted by telephone or willfully destroys or injures any telephone pole, wire, cable, or fixture, he or she is guilty of a Class A misdemeanor.

History. Acts 1885, No. 107, § 9, p. 176; C. & M. Dig., § 10246; Pope's Dig., § 14255; A.S.A. 1947, § 73-1810; Acts 2005, No. 1994, § 204.

Amendments. The 2005 amendment deleted "telegraph or" preceding the first occurrence of "telephone," substituted "telephone pole" for "telegraph pole," and inserted "Class A" preceding "misdemeanor."

23-17-109. [Repealed.]

Publisher's Notes. This section, concerning telegraph companies, divulging contents of a message and willful refusal to transmit or deliver a message — penalty, was repealed by Acts 2005, No. 1994, § 575. The section was derived from Acts 1868, No. 25, § 3, p. 81; C. & M. Dig., § 10250; Pope's Dig., § 14259; A.S.A. 1947, § 73-1812.

23-17-111. [Repealed.]

Publisher's Notes. This section, concerning overcharge by telegraph operators, was repealed by Acts 2005, No. 1994, § 576. The section was derived from Acts 1897, No. 53, §§ 2, 4, p. 72; C. & M. Dig., §§ 874, 10250a; Pope's Dig., §§ 1078, 14260; A.S.A. 1947, §§ 73-1403, 73-1405.

23-17-119. Surcharges to provide telecommunications for deaf and hearing impaired.

(a) As used in this section:

(1) "Commercial mobile radio service" means the same as defined at § 12-10-303; and

(2) "Prepaid wireless telephone service" means the same as defined at § 12-10-303.

(b)(1) To fund the equipment distribution program established by § 20-79-401 et seq., the Arkansas Public Service Commission may impose a surcharge of up to:

(A) Two-hundredths of a dollar ($0.02) per subject access line per month; and

(B) Two-hundredths of a dollar ($0.02) per working subject telephone number per month.

(2) Surcharges imposed by the commission under subdivisions (b)(1)(A) and (B) of this section shall:

(A) Be identical; and

(B) Not apply to prepaid wireless telephone service.

(c) The surcharges levied under this section shall be collected by the local exchange carriers and commercial mobile radio service providers from their customers and remitted to the Department of Finance and Administration for deposit as special revenues into the State Treasury to the credit of the Telecommunications Equipment Fund for the equipment distribution program under § 20-79-401 et seq.

(d) If revenues collected under this section exceed the costs of operating the program established by § 20-79-401 et seq., and if the excess at any time equals a three-year average of expenditures under this section and § 20-79-401 et seq., then the collection of the surcharge shall cease until one-half (½) of the surplus has been exhausted.

History. Acts 1995, No. 501, § 4; 2011, No. 173, § 2.

Amendments. The 2011 amendment added present (a) and redesignated the remaining subsections accordingly; rewrote present (b); and, in (c), deleted "access line" preceding "surcharges," inserted "and commercial mobile radio service providers" substituted "remitted to the Department of Finance and Administration

for deposit" for "deposited" and deleted "created in § 19-6-482" following "Telecommunications Equipment Fund."

23-17-120. Establishment of calling plans.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

23-17-121. Agreements for special terminating access rates or plans.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

Subchapter 2 — Rural Telecommunications Cooperatives

23-17-202. Definitions.

CASE NOTES

Cited: International Paper Co. v. MCI Worldcom Network Servs., 202 F. Supp. 2d 895 (W.D. Ark. 2002).

23-17-214. Bylaws.

(a)(1) The power to make, alter, amend, or repeal the bylaws of the cooperative shall be vested in the board of directors, subject to amendment by the members at an annual meeting.

(2)(A) The board shall not change, alter, amend, or repeal a provision of the bylaws adopted by the members except upon a unanimous vote of the directors in favor of the change, alteration, amendment, or repeal.

(B) If the directors change, alter, amend, or repeal a bylaw provision under this section, the bylaw provision shall remain effective unless the change, alteration, amendment, or repeal of the bylaw provision is presented by the members at the next annual or special meeting of the board.

(C) If the members at the next annual or special meeting of the board do not vote to ratify the directors' action in changing, altering, amending, or repealing the bylaw provision in question, the bylaw provision in question shall be deleted from the bylaws, and the bylaw

provision in question shall revert, effective the day after the members' meeting, to the wording that was in place immediately before the directors changed, altered, amended, or repealed the bylaw provision.

(b) The bylaws may contain any provisions for the regulation and management of the affairs of the cooperative not inconsistent with law or the articles of incorporation.

History. Acts 1951, No. 51, § 12; A.S.A. 1947, § 77-1612; Acts 1997, No. 316, § 6; 1999, No. 946, § 2; 2009, No. 761, § 1.

Amendments. The 2009 amendment subdivided (a)(2), inserted "or repeal" or variant throughout the subdivision, substituted "remain effective unless the change, alteration, amendment, or repeal of the bylaw provision is presented by the members at the next annual or special meeting of the board" for "be submitted to the members of the cooperative at their next annual or special meeting" in (a)(2)(B), substituted "next annual or special meeting of the board" for "meeting" in (a)(2)(C) and made minor stylistic changes throughout (a).

23-17-216. Membership fees and capital credits.

(a) When a member of a cooperative has paid the membership fee in full, a certificate of membership shall be issued to the member.

(b) Memberships in the cooperative and the certificates thereof shall be nontransferable and nonassignable.

(c) Membership may be cancelled upon the resignation, expulsion, dissolution, change in ownership, or death of the member or by the death or divorce of either party to a joint membership, if joint memberships are provided for in the bylaws.

(d) The membership fee shall not be refunded.

(e) Cooperatives shall not pay capital credits to a member, former member, patron, or former patron while the cooperative has outstanding and unpaid obligations in excess of ten percent (10%) of its net assets. The board of directors in its discretion may authorize payment of any capital credits allocated to deceased former members or patrons as provided in the bylaws. If the outstanding and unpaid obligations of the cooperative are less than ten percent (10%) of the cooperative's net assets based upon the cooperative's consolidated balance sheet as of the close of the cooperative's most recently audited fiscal year, the board shall have the discretion to pay previously allocated capital credits in any amount or manner the board deems appropriate.

History. Acts 1951, No. 51, § 18; A.S.A. 1947, § 77-1618; Acts 1989, No. 437, § 10; 1999, No. 946, § 4; 2007, No. 1579, § 1.

Amendments. The 2007 amendment substituted "ten percent (10%)" for "sixty percent (60%)" in two places in (e).

23-17-236. Construction standards.

CASE NOTES

Cited: Stoltze v. Ark. Valley Elec. Coop. Corp., 354 Ark. 601, 127 S.W.3d 466 (2003).

23-17-237. Limitation of actions.

CASE NOTES

Cited: International Paper Co. v. MCI Worldcom Network Servs., 202 F. Supp. 2d 895 (W.D. Ark. 2002).

23-17-240. Unclaimed capital credits and stock.

(a) When a cooperative formed under this subchapter declares capital credits and any capital credit which remains unclaimed one (1) year after notice of the capital credit was transmitted to the last known address of the beneficiary of the credit:

(1) The cooperative shall not be liable for the credit; and

(2) The credit shall not be deemed unclaimed or abandoned property under § 18-28-201 et seq.

(b)(1) When a cooperative formed under this subchapter has issued shares of stock and subsequent to that time has declared by providing notice to all shareholders of record that the cooperative is redeeming the stock by repurchase, then one (1) year after the notice has been sent to the last known address of all shareholders of record:

(A) The cooperative shall not be liable for the redemption or repurchase value of the stock; and

(B) The stock not redeemed and repurchased shall have no value or rights in the cooperative.

(2) The stock shall not be deemed unclaimed or abandoned property under § 18-28-201 et seq.

(c) References in the Rural Telecommunications Cooperative Act, § 23-17-201 et seq., to "this subchapter" and references in § 23-17-101 et seq. to "this chapter" shall be deemed to also reference this section.

History. Acts 1995, No. 898, § 1; 1999, No. 946, § 17; 2009, No. 761, § 2.

Amendments. The 2009 amendment subdivided (a) and deleted "the Uniform Disposition of Unclaimed Property Act" following "under" in (a)(2); inserted (b) and redesignated the subsequent subsection accordingly; deleted "23-17-242" following "§ 23-17-201" in (c); and made related and minor stylistic changes.

Subchapter 4 — Telecommunications Regulatory Reform

Effective Dates. Acts 2003, No. 1788, § 10: Apr. 22, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas, that lowering and stabilizing the carrier common line rate will promote lower telephone toll rates for Arkansas residents and will encourage economic development; that this act is immediately necessary to implement the administrative changes necessary to reduce the carrier common line rate by January 1, 2004; and that any delay in the effective date of this act could create an undue burden upon Arkansas citizens and could work irreparable harm upon the efficient provision of telecommunications services throughout Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 385, § 10: Mar. 19, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that there is an immediate need for the amendment of the Telecommunications Regulatory Reform Act of 1997 to ensure compliance with federal law and regulations and to continue to encourage growth and competition; that any delay in the effective date of this act. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-17-402. Legislative findings.

It is the intent of the General Assembly in enacting this subchapter to:

(1) Provide for a system of regulation of telecommunications services, consistent with the federal act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service;

(2) Recognize that a telecommunications provider that serves high-cost rural areas or exchanges faces unique circumstances that require

special consideration and funding to assist in preserving and promoting universal service;

(3) Recognize that the:

(A) Widespread and timely deployment of broadband infrastructure is vital to the economic, educational, health, and social interests of Arkansas and its citizens; and

(B) Arkansas High Cost Fund has enabled eligible telecommunications carriers to accelerate and promote the incremental extension and expansion of broadband services and other advanced services in rural or high-cost areas of the state beyond what would normally occur, and broadband services are now available in dozens of new communities to thousands of Arkansans who otherwise would not have access to broadband services and its benefits;

(4)(A) Recognize differences between the small and large incumbent local exchange carriers, that there are customer-owned telephone cooperatives and small locally owned investor companies, and that it is appropriate to provide incentives and regulatory flexibility to allow incumbent local exchange carriers that serve the rural areas to provide existing services and to introduce new technology and new services in a prompt, efficient, and economical manner.

(B) The General Assembly finds that the Arkansas Public Service Commission, when promulgating rules and regulations, should take into consideration the differences in operating conditions in the large and small incumbent local exchange carriers and the burdens placed on small carriers because of regulation; and

(5)(A) Recognize that in areas of the state served by electing companies, telecommunications connections utilizing unregulated technologies such as wireless and Voice over Internet Protocol greatly outnumber traditional wireline connections that remain regulated by the commission.

(B) The General Assembly finds that the removal of quality-of-service regulation of wireline services provided in the competitive exchanges of electing companies will serve to encourage private-sector investment in the telecommunications marketplace.

History. Acts 1997, No. 77, § 2; 2011, No. 290, § 1; 2011, No. 594, § 1.

Amendments. The 2011 amendment by No. 290 inserted present (3) and (4) and redesignated former (3) as (5); and substituted "Arkansas Public Service Commission" for "commission" in (5)(B).

The 2011 amendment by No. 594 added (3) and redesignated former (3) as (4); substituted "Arkansas Public Service Commission" for "commission" in (4)(B); and added (5).

23-17-403. Definitions.

As used in this subchapter:

(1) "Access line" means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility;

(2)(A) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or that is under common ownership or control with another entity.

(B) For the purpose of this definition, "owns or controls" means holding at least a majority of the outstanding voting power;

(3) "Arkansas IntraLATA Toll Pool" means the unincorporated organization of the Arkansas incumbent local exchange carriers, approved by the commission, whose purpose is to redistribute the pooled revenues from intraLATA toll telephone service;

(4) "Arkansas Intrastate Carrier Common Line Pool" or "AICCLP" means the unincorporated organization of the providers of Arkansas telecommunications services, authorized by the commission and by state law, whose purpose is to manage billing, collection, and distribution of the carrier common line revenue requirements;

(5) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the following:

(A) Voice-grade access to the public switched network, with ability to place and receive calls;

(B) Touch-tone service availability;

(C) Flat-rate residential local service and business local service;

(D) Access to emergency services (911/E911) where provided by local authorities;

(E) Access to basic operator services;

(F) A standard white-page directory listing;

(G) Access to basic local directory assistance;

(H) Access to long distance toll service providers; and

(I) The minimum service quality as established and required by the commission on February 4, 1997;

(6) "Commercial mobile service" means cellular, personal communications systems and any service regulated pursuant to Part 20 of the rules and regulations of the Federal Communications Commission, 47 C.F.R. Part 20, or any successor provisions;

(7) "Commission" means the Arkansas Public Service Commission;

(8) "Competing local exchange carrier" or "CLEC" means a local exchange carrier that is not an incumbent local exchange carrier;

(9) "Electing company" means a local exchange carrier that elects to be regulated pursuant to §§ 23-17-406 — 23-17-408;

(10) "Eligible telecommunications carrier" means the local exchange carrier determined in accordance with § 23-17-405;

(11) "Embedded investment" means the amount of investment in telephone plant that has already been made by an incumbent local exchange carrier as of February 4, 1997;

(12) "FCC" means the Federal Communications Commission;

(13) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications services, including switching systems, cables, fiber optic and microwave radio transmission systems, measuring equipment, billing equipment,

operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide or support telecommunications services;

(14) "Federal act" means the Communications Act of 1934, as amended;

(15) "Government entity" includes all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational entities, including school districts, and political subdivisions, including incorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, and county governments;

(16) "Incumbent local exchange carrier" or "ILEC" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the commission and was providing basic local exchange service on February 8, 1996;

(17) "Interstate access charge pools" means the system, currently administered by the National Exchange Carriers Association, wherein participating local exchange carriers pool billed interstate access revenues;

(18) "Local exchange area" means the geographic area, approved by the commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched-access services;

(19) "Local exchange carrier" or "LEC" means a telecommunications provider of basic local exchange service and switched-access service. The term does not include commercial mobile service providers;

(20) "Network element" means a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;

(21) "Resale" means the purchase of services by one (1) local exchange carrier from another local exchange carrier for the purpose of reselling those services directly or indirectly to an end-user customer;

(22) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the federal act as of February 4, 1997;

(23) "Switched-access service" means the provision of communications between a customer premise and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination or termination of interexchange long distance traffic;

(24) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation;

(25)(A) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other

electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities.

(B) The term does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity providing the services, or services to the extent that the services are used in connection with the operation of an electric utility system owned by a government entity;

(26)(A) "Tier one company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the State of Arkansas on February 4, 1997.

(B) Changes in designation of an incumbent local exchange carrier, or portions thereof, as a tier one company or non-tier one company may be effected by prior approval from the commission pursuant to § 23-17-411(i);

(27) "Universal service" means those telecommunications services that are defined and listed in the definition of basic local exchange service until changed by the commission pursuant to § 23-17-404(e)(2)(A);

(28) "Extended area service" means an unlimited local service provided to the customer at a fixed rate that:

(A) Is mandated by the commission at the election of customers within a local exchange area;

(B) Provides one-way or two-way calling between basic local exchange service customers within the local exchange area of one (1) or more incumbent local exchange carriers; and

(C) Is not included as part of basic local exchange service;

(29) "Access minute", unless otherwise defined by the Arkansas Public Service Commission, means the measurement of usage to provision communications between:

(A) A customer premises and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic; and

(B) A customer premises and another LEC's point of termination with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic;

(30) "AICCLP member" means an ILEC that is eligible to be a member of the AICCLP after December 31, 2003, and that has not terminated its membership under § 23-17-416(f)(2);

(31)(A) "AICCLP rate adjustment" means the local service rate adjustment, determined by the AICCLP administrator, that may be charged by each AICCLP member to its customers to recover a portion of its carrier common line net revenue requirement.

(B)(i) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of the residential

local exchange rate and extended area service additive is higher than the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of fifty cents (50¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(ii) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of its residential local exchange rate and extended area service additive is lower than the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of seventy-five cents (75¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(iii) If the amount due to an AICCLP member under § 23-17-416(h) is limited due to the annual one million three hundred thousand dollar ($1,300,000) cap under § 23-17-416(e)(8)(B)(i) and if the member's AICCLP rate adjustment and the amount due to the AICCLP member under § 23-17-416(h) do not allow the member to recover its common line net revenue requirement, the member may charge an additional amount for local rates to recover its carrier common line net revenue requirement;

(32) "Arkansas intrastate telecommunications services revenues" means the revenues of all carriers that are not ILECs, that are derived from end-users for telecommunications within Arkansas and telecommunications services provided within Arkansas, including messages that are switched or otherwise temporarily transported outside of Arkansas in the process of delivering the message within Arkansas;

(33) "Carrier common line net revenue requirement" means the monthly variable funding requirement of an AICCLP member, which is calculated as the sum of the member's intrastate carrier common line revenue requirement, the member's terminating carrier common line expense based on its per-minute terminations on other ILECs, the member's Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, and the member's share of AICCLP administrative fees, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, the AICCLP rate adjustment, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the member;

(34) "Data development period" means the time period in which the AICCLP members and initial exiting ILECs shall obtain relevant data necessary to:

(A) Calculate the fixed amounts of retail billed minutes-of-use expense and to test and obtain reliability of the billing and reporting systems to be used by the AICCLP; and

(B) Calculate the fixed carrier common line revenue shortfall for members required to exit the pool on December 31, 2003;

(35) "Exiting ILEC" means an ILEC that terminates its membership in the AICCLP under § 23-17-416(f);

(36) "Fixed carrier common line revenue shortfall" means the total annual funding requirement of an ILEC that must exit the AICCLP under § 23-17-416(f)(1), which is calculated as the sum of an ILEC's intrastate carrier common line revenue requirement, the ILEC's terminating carrier common line expense based on its per-minute terminations on other ILECs, and the ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the ILEC;

(37) "Fixed ILEC retail billed minutes of use expense" means the fixed determination of the average retail billed minutes-of-use expense paid to the AICCLP by the ILEC based upon the ILEC's three-month average retail billed minutes of use expense during its applicable data development period, as determined under § 23-17-416(h), exclusive of any retail billed minutes of use expense associated with retail billed minutes of uses provided by a toll reseller of an underlying carrier that is an ILEC;

(38) "ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense" means the charge assessed against an ILEC in proportion to the AICCLP credits that were eliminated by § 23-17-404(e)(4)(D)(iv)(*b*);

(39) "ILEC intrastate carrier common line revenue requirement" means the fixed annual payment that each ILEC was entitled to receive from the AICCLP, before any offsets or adjustments, as provided in the Arkansas Intrastate Carrier Common Line Pool tariff, as it existed before January 1, 2004;

(40) "Special intrastate ILEC revenue" means the revenue a toll reseller pays to an ILEC when the ILEC provides toll services to the toll reseller;

(41) "Toll reseller" means a carrier that resells intrastate telecommunications services that are provided to the carrier by an underlying carrier;

(42)(A) "Total customer access base" means the total of all eligible telecommunications carrier customer access lines within Arkansas of an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another entity.

(B) For the purposes of subdivision (42)(A) of this section, "own" means to own an equity interest or the equivalent thereof of more than ten percent (10%);

(43) "Underlying carrier" means a facilities-based CLEC or an interexchange carrier, other than an ILEC, that originates and terminates intrastate interexchange calls on the public switched network directly or through resale to a toll reseller or an ILEC that provides the toll services used by a toll reseller;

(44) "Telecommunications Providers Rules" or "TPRs" means those rules applicable to telecommunications providers that have been adopted by the commission;

(45) "Universal Service Administration Company" or "USAC" means a corporation under that name or its successor that performs various administrative and procedural duties prescribed to it by the FCC and others;

(46) "National Exchange Carrier Association, Inc.," or "NECA" means a corporation by that name or its successor that performs various administrative functions and procedural duties prescribed to it by the FCC and others;

(47) "Study area" means a geographic area designated by the FCC and used by NECA or USAC for calculation of cost per loop within the geographic area's boundaries for federal high-cost loop support;

(48) "Annual unseparated unlimited loop requirement" means a financial algorithm calculated annually by NECA and USAC that includes all the loop investment, expenses, and other loop costs of providing service within the study area of an eligible telecommunications carrier;

(49) "2007 revenue base" means the gross revenue an ETC was eligible to receive from the AUSF during the first six (6) months of 2007 annualized without reduction for an overpayment that occurred in 2006;

(50) "Average schedule company" means a company that uses a proxy established from a formula using the average costs of a group of companies rather than using the company's specific costs in reporting to NECA;

(51) "Wireline ETC" means a wireline eligible telecommunications carrier that is a local exchange carrier;

(52) "Wireless ETC" means a wireless eligible telecommunications carrier that is a commercial mobile service provider;

(53) "Local switching support" means funding to assist high cost companies in recovering the costs of switching intrastate calls; and

(54) "Wire center" means the location of one (1) or more local switching systems, a point at which end user's loops within a defined geographic area converge.

History. Acts 1997, No. 77, § 3; 2003, No. 1764, § 1; 2003, No. 1788, §§ 1-6; 2007, No. 385, §§ 2, 3.

A.C.R.C. Notes. Acts 2007, No. 385, § 1, provided:

"Legislative findings.

"The General Assembly finds that:

"(1) The development of an administratively streamlined universal service fund based upon high cost support is important public policy;

"(2) It is administratively efficient to use financial data submitted by eligible telecommunications companies to federal

agencies, made under penalty of law, and when appropriate, cost proxies, for the high-cost support mechanism, to be called the "Arkansas High Cost Fund", thereby eliminating the need for extensive financial review and the high administrative costs created by such reviews;

"(3) A five-year transition from the Arkansas Universal Service Fund to the Arkansas High Cost Fund is important public policy due to the shift from a revenue replacement fund based upon current changes to a high-cost fund using financial data that is two (2) or more years old;

"(4) Due to the complex nature and ever-changing administration of telecommunications at the federal level, potential changes in how access charges are collected could disrupt support for eligible telecommunications companies serving rural areas;

"(5) Eligible telecommunications company members of the AICCLP are more adversely affected by sudden changes in regulation, access charges, and statutory changes; and"

Amendments. The 2007 amendment substituted "eligible telecommunications carrier" for "ILEC" in (42)(A), and added (44) through (54).

23-17-404. Preservation and promotion of universal service.

(a)(1) The Arkansas High Cost Fund (AHCF) is established by this section in order to promote and assure the availability of universal service at rates that are reasonable and affordable and to provide for reasonably comparable services and rates between rural and urban areas.

(2) The AHCF will provide funding to an eligible telecommunications carrier that provides basic local exchange services using its own facilities or a combination of its own facilities and another carrier's facilities by the eligible telecommunications carrier within its study area.

(3) The AHCF shall be designed to provide predictable, sufficient, and sustainable funding to eligible telecommunications carriers serving rural or high-cost areas of the state.

(4) The AHCF shall also be used to accelerate and promote the incremental extension and expansion of broadband services and other advanced services in rural or high-cost areas of the state beyond what would normally occur and support the Lifeline Assistance Program to eligible low-income customers.

(b)(1) The AHCF is to provide a mechanism to restructure the present system of telecommunication service rates in the state as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high-cost areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high-cost areas do not have comparable access and subscribership.

(2)(A) This AHCF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues.

(B) Because customers of the telecommunications providers that would pay the AHCF charge receive the benefits of a universal network, the telecommunications providers may surcharge their

customers to recover the AHCF charges paid by the telecommunications provider. Therefore, the AHCF charge is not a tax and is not affected by state laws governing taxation.

(C) For the purpose of assessing mobile telecommunications services, the AHCF administrator shall continue to assess only Arkansas intrastate retail telecommunications service revenues and only to the extent such revenues may be considered located in the State of Arkansas in accordance with the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.

(c)(1)(A) The Arkansas Public Service Commission shall delegate to a trustee, the "AHCF administrator", the administration, collection, and distribution of the AHCF within forty-five (45) days of the effective date of the adoption of rules and procedures to implement the AHCF.

(B) In evaluating responses to request for proposals for the AHCF administrator's position, the commission shall consider and give material weight to the applicant's:

(i) Familiarity with Arkansas ETCs, Arkansas access rates, AIC-CLP history and procedures, and AUSF history and procedures; and

(ii) Personal availability to provide information and assistance to the General Assembly, telecommunications providers, and members of the public.

(2)(A) The AHCF administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AHCF.

(B) As soon as practicable after the AHCF administrator is designated, he or she shall:

(i) Promptly notify all Arkansas ETCs of the availability of AHCF support and accept requests for AHCF support from Arkansas ETCs; and

(ii) Review and determine the accuracy and appropriateness of each request and advise the entity requesting the funds of his or her determination, including:

(a) Eligibility for support;

(b) The unreduced amount of support available during the phase-in period;

(c) The uncapped amount of support available; and

(d) The actual support available after implementation of all phase-in reductions and fund cap limitations.

(C) The affected parties shall have thirty (30) days to request reconsideration by the commission of the AHCF administrator's determination, and the commission after notice and hearing, if requested, shall issue its opinion on the reconsideration within thirty (30) days after the request of reconsideration unless continued by the commission.

(D) Persons aggrieved by the commission's opinion shall have the right to appeal the opinion in accordance with law.

(d)(1)(A) The AHCF administrator periodically shall establish and notify each telecommunications provider of the AHCF charge levels

required to be paid by the telecommunications provider. In order to fund the AHCF at the required level, as soon as administratively reasonable after March 19, 2007, the AUSF administrator shall adjust the surcharge to ensure it will adequately fund the projected monthly payments required under this section, have sufficient reserves, and have the surplus necessary to fund the transition period required by this section. The AUSF administrator shall continue to charge and collect the AUSF surcharge until the AHCF administrator is designated by the commission and the AHCF administrator has adequate time to undertake charging and collecting the surcharge as the AHCF charge.

(B) The AUSF administrator shall continue to administer the AUSF until the AUSF has paid all administrative fees and completed its duties. The AUSF administrator shall cooperate with the AHCF administrator in transferring information and documentation necessary for the AHCF administrator to bill and collect charges from responsible parties and to transfer information about all accounts receivable due the AUSF administrator from responsible parties.

(C) All accounts payable to the AUSF administrator, all funds held by the AUSF administrator, and assets of the AUSF administrator shall be transferred to the AHCF administrator, when the AHCF administrator requests, to allow the AHCF administrator to carry out his or her function. When the AUSF administrator has completed his or her duties under the AUSF and completed his or her duties concerning transfer of information and other assistance, the AUSF administrator shall terminate all further activity in regard to the AUSF and the AHCF. If a transfer of funds is made to the AHCF administrator before the finalization of all duties by the AUSF administrator, the AUSF administrator may retain funds necessary for the AUSF administrator to fully pay all expected administrative costs of finalizing his or her duties and thereafter shall transfer any remaining funds to the AHCF administrator.

(2) Any telecommunications provider that without just cause fails to pay the AHCF charge that is due and payable pursuant to this section after notice and opportunity for hearing shall have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the commission.

(3) The AHCF charge shall not be subject to any state or local tax or franchise fees.

(e) After reasonable notice and hearing, the commission shall establish rules and procedures necessary to implement the AHCF. The commission shall implement the AHCF and make AHCF funds available to eligible telecommunications carriers beginning the first calendar month after one hundred fifty (150) days after March 19, 2007. In establishing and implementing the AHCF, the commission shall adhere to the following instructions and guidelines:

(1)(A) AHCF funding shall be provided directly to eligible telecommunications carriers.

(B)(i) Except in an exchange in which the electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c), for an ETC to receive funds from the AHCF, the ETC shall agree to be subject to and comply with all telecommunications provider rules adopted by the commission, unless the commission finds the technology used by the ETC to provide telecommunications service makes a rule inapplicable.

(ii) Except in any exchange in which the electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services pursuant to § 23-17-408(c), each ETC shall be subject to all TPRs concerning application for service, refusing service, deposits, notices before disconnect, late payment penalties, elderly and handicapped protection, medical need for utility services, delayed payment agreements, and extended due dates.

(2)(A) The commission shall provide a report to the Legislative Council by October 31 of the year prior to a regular session of the General Assembly detailing any recommended changes to the universal service list of requirements that are to be supported by the AHCF. This list may be approved by the General Assembly, and if approved, the AHCF support to ETCs may be adjusted, due to the approved changes, to reflect an increase or decrease in the size of the AHCF by increasing or decreasing the overall financial cap on the AHCF to recover the cost of additions or revisions to the universal service list concurrent with any such revisions to the list of universal services identified in § 23-17-403.

(B) In considering revisions to the universal service list, the commission shall consider the need for the addition or removal of a service to the list in order to maintain end-user rates for universal services that are reasonably comparable between urban and rural areas or to reflect changes in the type and quality of telecommunications services considered essential by the public as evidenced, for example, by those telecommunication services that are purchased and used by a majority of single-line urban customers.

(C) A rate case proceeding or earning investigation or analysis shall not be required or conducted in connection with the recovery of the cost of additions or revisions or in connection with the administration of the AHCF;

(3)(A) The AICCLP members shall charge the rate under subdivision (e)(4)(B)(i) of this section to underlying carriers.

(B) The ILECs shall charge a reciprocal rate to other ILECs.

(C) The commission may review the accuracy of the reciprocal rates and the per-access minute carrier common line rate charged under subdivision (e)(4)(B)(i) of this section.

(D) If the AICCLP fails to provide an ILEC's carrier common line net revenue requirement, the ILEC may obtain concurrent recovery of the revenue loss from basic local exchange rates, intrastate access

rate adjustments, or a combination thereof. Any recovery of revenue loss under this subdivision (e)(3)(D) shall not be subject to the caps on local rates under § 23-17-412;

(4)(A) Through December 31, 2003, except as provided in this subdivision (e)(4)(A), the intrastate Carrier Common Line Pool charges billed to carriers by the Arkansas Intrastate Carrier Common Line Pool (AICCLP) shall be determined as provided in the AICCLP tariff effective on December 31, 2000. Following April 20, 2001, carriers must continue to report RBMOUs associated with the traffic that they reported as of December 2000, except that incumbent local exchange carriers may discontinue reporting RBMOUs associated with their intracompany flat-rated optional plans that exist as of June 1, 2001. The AICCLP charges shall be adjusted to eliminate any credits to the AICCLP or to interexchange carriers that have been previously required.

(B)(i) Beginning January 1, 2004, except as provided in this subdivision (e)(4)(B), the intrastate Carrier Common Line charges billed to ILECs and underlying carriers shall be determined at the rate of one and sixty-five hundredths cents (1.65¢) per intrastate access minute, exclusive of the amounts specified for funding the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund. However, ILECs that are not AICCLP members may charge at a rate that is less than one and sixty-five hundredths cents (1.65¢) and may recover the difference between the actual rate charged and one and sixty-five hundredths cents (1.65¢) as allowed under § 23-17-416(b)(3). Following April 20, 2001, carriers must continue to report RBMOUs associated with the traffic that they reported as of December 2000 and shall continue to report through December 31, 2003, except that incumbent local exchange carriers may discontinue reporting RBMOUs associated with their intracompany flat-rated optional plans that exist as of June 1, 2001. The AICCLP charges shall be adjusted to eliminate any credits to the AICCLP or to interexchange carriers that have been previously required.

(ii)*(a)* There is created an allocation of AICCLP funds to be known as the "Extension of Telecommunications Facilities Fund".

(b) A maximum of five hundred thousand dollars ($500,000) per year of AICCLP funds shall be allocated to fund the Extension of Telecommunications Facilities Fund to assist in the extension of telecommunications facilities to citizens not served by the wire line facilities of an eligible telecommunications carrier.

(iii)*(a)(1)* There is also created an AICCLP allocation to be known as the "Arkansas Calling Plan Fund".

(2) Through December 31, 2003, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be funded by the AICCLP by assessing one-half (½) of the fund to be paid by ILECs and one-half (½) of the fund to be paid by all other telecommunications providers reporting intrastate retail billed minutes of use to the AICCLP.

(b) The Arkansas Calling Plan Fund shall receive a maximum of four million five hundred thousand dollars ($4,500,000) per year to assist in funding the provision of calling plans in telephone exchanges in the state.

(iv)*(a)* Through December 31, 2003, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be funded by the AICCLP assessing one-half (½) of the fund to be paid by incumbent local exchange carriers (ILECs) and one-half (½) of the fund to be paid by all other telecommunications providers reporting intrastate retail billed minutes of use to the AICCLP. Beginning January 1, 2004, the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund will be paid by the AICCLP members, exiting ILECs, and underlying carriers as follows:

(1) Each AICCLP member and each exiting ILEC shall remit to the AICCLP administrator on a monthly basis the proportion of the total assessment each was paying before December 31, 2003, for a collective total of one-half (½) of those funds;

(2) Underlying carriers shall pay to the administrator a collective total of one-half (½) of the cost of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund; and

(3) Each underlying carrier shall continue to remit to the administrator on a monthly basis its portion of the underlying carrier funding requirement of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund, based upon the underlying carrier's share of Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues proportionate to the total Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues of all underlying carriers.

(b) Through December 31, 2003, ILECs shall be individually assessed in accordance with the proportion that the ILEC funds the AICCLP credits that are being eliminated by this section, and each other telecommunications provider shall be assessed based on its portion of the total non-ILEC intrastate retail billed minutes of use.

(c) Amounts paid by ILECs to fund either the Extension of Telecommunications Facilities Fund or the Arkansas Calling Plan Fund created by this section shall not be recoverable from the Arkansas Universal Service Fund (AUSF).

(d)(1) The assessments shall commence upon the first day of the month following April 20, 2001.

(2) Assessments shall be made with respect to the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund only to the extent necessary, but not more than the maximum specified in this section, to fund any extensions of facilities or calling plans approved by the Arkansas Public Service Commission in accordance with applicable law and this section.

(v)*(a)* AICCLP charges determined and billed through December 2000 shall be considered final and not subject to further true up or adjustment.

(b)(1)(A) Unless an audit is requested prior to February 28, 2004, by a two-thirds (⅔) vote of the participating carriers of the AICCLP as it is constituted prior to January 1, 2004, charges determined and billed through December 2003 shall be considered final and not subject to audit.

(B) The AICCLP board, with the assistance of the administrator, shall allow recipients and payors to correct any errors concerning the AICCLP settlement process for corrections that are for the time period after December 31, 2003.

(2) The administrator of the AICCLP as it existed prior to January 1, 2004, may supervise any audit that is requested and may further take any action deemed reasonable or necessary to finalize the winding-up process of the AICCLP as it existed prior to January 1, 2004.

(C)(i) Any ETC may receive support from the AHCF after it is established and operational. Until that time, the current AUSF shall continue to provide support through June 30, 2007, at the level set by commission order. After June 30, 2007, the support level for companies receiving payments from the AUSF shall continue at the level previously ordered by the commission subject to an adjustment to reflect the elimination of an overpayment made to AUSF recipients in 2006. At such time that the AHCF is fully operational and providing support to ETCs through the formula set forth herein, all payments from the AUSF shall cease and the AUSF shall be eliminated and administratively closed as soon as possible.

(ii)*(a)* The formula is as follows for ETCs with fewer than five hundred thousand (500,000) access lines or customers:

(1) The AHCF administrator shall determine the support for High Cost Loop Support by using the most current annual filing of annual unseparated unlimited loop revenue requirement cost per loop of the ETC's study area as developed each year by NECA and filed with USAC. For an ETC not submitting such information, the ETC shall submit equivalent information to the administrator for the administrator to calculate as to cost per loop for wireline or per customer for commercial mobile service providers. Unless the commission determines otherwise the raw financial data submitted to the administrator to establish an alternate cost per loop shall be treated as confidential;

(2) The AHCF administrator shall then subtract the per-loop federal high-cost loop support as developed each year by NECA and filed with USAC of the ETC's study area or alternatively the total high-cost loop support per loop or per customer as calculated by the AHCF administrator with data provided by the ETC;

(3) The AHCF administrator shall also subtract the amount of three hundred forty-four dollars and forty cents ($344.40) per loop, due to the responsibility of each ETC to fund through local rates and other revenue such as AICCLP revenue requirements and access charges, to fund a significant portion of their cost per loop. Alterna-

tively, the AHCF administrator shall subtract three hundred forty-four dollars and forty cents ($344.40) per loop or customer from ETCs not reporting loops and loop cost to NECA;

(4) The AHCF administrator shall determine the high-cost support for each ETC by subtracting these reductions as set forth in this formula from the annual unseparated unlimited loop revenue requirement and apply it to the total number of loops in the ETC's study area as of December 31 of the preceding year that are eligible for support for federal universal service. As to ETCs not reporting loops within its study area, the AHCF administrator shall apply the reductions to the total number of loops or customers of the ETC eligible for support for federal universal service as of December 31 of the preceding year; and

(5) The remaining balance, if positive as to each ETC, shall be the ETC's loop support element to support an ETC's high cost loops. As to ETCs funded based upon customers, the remaining balance, if positive, shall be called the "customer support element".

(b)(1) The AHCF administrator shall determine local switching support (LSS) of each ETC using the most current annual financial data submitted to NECA and calculated by USAC and applying the following procedure:

(A) The AHCF administrator shall use the most current trued up local switching support amount that has been calculated by NECA and submitted to USAC annually for each ETC within its size group. For each ETC that does not have an individually calculated local switching support amount, the AHCF administrator shall calculate a local switching support amount by using an average of all ETCs within its size group that have an established local switching support amount;

(B) The AHCF administrator shall calculate the local switching support factor for each ETC's study area by taking the 1996 weighted dialed equipment minute factor as supplied in the NECA submission of 1999 Network Data Management — Usage filed on March 1, 2001, with the FCC and subtracting the 1996 interstate dialed equipment minute factor as supplied in the NECA submission of 1999 network usage data filed on March 1, 2001, with the FCC. This result shall be called the "local switching support factor". For each ETC that does not have an individually calculated weighted dialed equipment minute factor and an interstate dialed equipment minute factor, the AHCF administrator shall calculate a weighted dialed equipment minute factor and an interstate dialed equipment minute factor by using an average of all ETCs within its size group that have an established weighted dialed equipment minute factor and an interstate dialed equipment minute factor;

(C) The AHCF administrator shall then calculate the total LSS revenue requirement for each ETC by dividing the local switching support amount calculated in subdivision (e)(4)(C)(ii)*(b)(1)(A)* of this section by the local switching support factor as calculated in subdivision (e)(4)(C)(ii)*(b)(1)(B)* of this section;

(D) The AHCF administrator shall then divide the total LSS revenue requirement for each ETC by the total number of loops in the ETC's study area as of December 31 of the preceding year that are eligible for support for federal universal service;

(E) The AHCF administrator shall then calculate the local switching support (LSS) to be recovered by multiplying the total LSS revenue requirement per loop as calculated in subdivision (e)(4)(C)(ii)*(b)(1)(D)* of this section by fifteen percent (15%); and

(F) The sum of subdivision (e)(4)(C)(ii)*(b)(1)(E)* of this section as to each ETC, if positive, shall be the ETC's local switching support element.

(2) If a request for support is made by an ETC that does not have switching support calculated by NECA, the commission shall develop a proxy method to be used to calculate such an ETC's local switching support. The sum of the calculation for each ETC from the proxy method, if positive, shall be the ETC's local switching support element.

(c)(1) For ETCs with AHCF support based on loops, the AHCF administrator shall determine each ETC's local loop support by multiplying the number of loops of the ETC as of December 31 of the preceding year that are eligible for federal universal service support by the ETC's loop support element, if applicable, and the AHCF administrator shall determine the ETC's local switching support by multiplying the number of loops of the ETC as of December 31 of the preceding year that are eligible for federal universal service support by the ETC's local switching support element. The AHCF administrator shall determine the uncapped AHCF support for each ETC by adding the sum of the ETC's total loop support, if any, and the ETC's total local switching support, if any.

(2) For ETCs with AHCF support based on customers, the AHCF administrator shall determine the ETC's customer support element by multiplying the number of customers of the ETC as of December 31 of the preceding year who are eligible for federal universal service support by the ETC's customer support element, if applicable, and the AHCF administrator shall determine the ETC's local switching support by multiplying the number of customers of the ETC as of December 31 of the preceding year who are eligible for federal universal service support by the ETC's local switching support element. The AHCF administrator shall determine the uncapped AHCF support for the ETC by adding the sum of the ETC's total loop support, if any, and the ETC's total local switching support, if any.

(3)(A) If state or federal regulatory or legislative actions eliminate the publicly available elements used to calculate loop support under subdivision (e)(4)(C)(ii)(*a*)(*1*) of this section or local switching support under subdivision (e)(4)(C)(ii)(*b*)(*1*) of this section for an ETC with a total customer access base or total customer base of fewer than fifteen thousand (15,000) lines or customers, the AHCF administrator shall promptly notify the commission.

(B) Once notified, the commission shall open a rule-making docket to replace the eliminated elements used to calculate loop support under subdivision (e)(4)(C)(ii)(*a*)(*1*) of this section or local switching support under subdivision (e)(4)(C)(ii)(*b*)(*1*) of this section.

(C) Until alternate elements are adopted by the commission, the AHCF administrator shall use the previous determinations as used during the year immediately preceding the year the elements were eliminated to calculate loop support under subdivision (e)(4)(C)(ii)(*a*)(*1*) of this section or local switching support under subdivision (e)(4)(C)(ii)(*b*)(*1*) of this section.

(D) Upon commission adoption of the replacement elements, the commission shall order the AHCF administrator to incorporate those replacement elements into the previously existing method used by the AHCF administrator to calculate loop support under subdivision (e)(4)(C)(ii)(*a*)(*1*) of this section or local switching support under subdivision (e)(4)(C)(ii)(*b*)(*1*) of this section. The calculations shall be:

(i) Based on the fully allocated cost of the affected ETCs; and

(ii) Effective as of the next annual determination process date, as established by the commission.

(iii)*(a)* For ETCs with five hundred thousand (500,000) lines or more on or after December 31, 2010, support shall be determined using the following procedure:

(1) Using the FCC's synthesis model available from USAC or an equivalent replacement model, the AHCF administrator shall take the ETC's average monthly per-line cost for each eligible wire center and subtract the FCC cost model benchmark. The result of the line cost minus the benchmark is the available per-line high-cost support available for that wire center;

(2) The AHCF administrator then shall multiply the available high-cost support for each eligible wire center by the number of lines reported to the AHCF administrator by the carrier as of December 31 of the preceding year. Eligible wire centers shall be wire centers with three thousand (3,000) access lines or less as of March 19, 2007; and

(3) The total of the calculations by the AHCF administrator for all eligible wire centers shall be the high-cost support available to the ETC, as limited by cap restrictions.

(b) The support provided by the AHCF shall be calculated as an annual amount paid in equal monthly payments and recalculated annually by the AHCF administrator in compliance with this section and the commission's rules and procedures.

(iv) In the event that an element used to determine AHCF support is materially changed or eliminated, the AHCF administrator shall use an equivalent or similar element in calculating the AHCF support in subdivisions (e)(4)(C)(ii) and (iii) of this section.

(v) The AHCF shall be phased in over a five-year transition period. The phase-in shall transition from the AUSF revenue replacement mechanism to the AHCF high-cost support mechanism for ETCs with a total customer access base of under fifteen thousand (15,000) access

lines. ETCs with a total customer access base of over fifteen thousand (15,000) access lines shall not participate in the transition or in the funding of the transition, and any calculations related to the transition apply only to the size group with a total customer access base of under fifteen thousand (15,000) access lines. The AHCF administrator shall apply the AHCF transition period for the ETCs as follows:

(a) In year one of the transition period, the administrator shall first calculate the total support due an ETC from the AHCF. If the AHCF calculation for the ETC exceeds the revenue the ETC received from the AUSF in the 2007 revenue base, the AHCF calculation shall be the ETC's uncapped unreduced AHCF support. If the ETC's calculated AHCF support is less than the ETC's 2007 revenue base, then the ETC's AHCF uncapped support in year one shall be the ETC's AHCF calculated support plus eighty-nine percent (89%) of the difference between the ETC's 2007 revenue base and the ETC's calculated AHCF support;

(b) In year two of the transition period, the administrator shall first calculate the total support due an ETC from the AHCF. If the AHCF calculation for the ETC exceeds the revenue the ETC received from the AUSF in the 2007 revenue base, the AHCF calculation shall be the ETC's uncapped unreduced AHCF support. If the ETC's calculated AHCF support is less than the ETC's 2007 revenue base, the ETC's AHCF uncapped support in year two shall be the ETC's AHCF calculated support plus seventy-eight percent (78%) of the difference between the ETC's 2007 revenue base and the ETC's calculated AHCF support;

(c) In year three of the transition period, the administrator shall first calculate the total support due an ETC from the AHCF. If the AHCF calculation for the ETC exceeds the revenue the ETC received from the AUSF in the 2007 revenue base, the AHCF calculation shall be the ETC's uncapped unreduced AHCF support. If the ETC's calculated AHCF support is less than the ETC's 2007 revenue base, the ETC's AHCF uncapped support in year three shall be the ETC's AHCF calculated support plus sixty-seven percent (67%) of the difference between the ETC's 2007 revenue base and the ETC's calculated AHCF support;

(d) In year four of the transition period, the administrator shall first calculate the total support due an ETC from the AHCF. If the AHCF calculation for the ETC exceeds the revenue the ETC received from the AUSF in the 2007 revenue base, the AHCF calculation shall be the ETC's uncapped unreduced AHCF support. If the ETC's calculated AHCF support is less than the ETC's 2007 revenue base, the ETC's AHCF uncapped support in year four shall be the ETC's AHCF calculated support plus fifty-one percent (51%) of the difference between the ETC's 2007 revenue base and the ETC's calculated AHCF support;

(e) In year five of the transition period, the administrator shall first calculate the total support due an ETC from the AHCF. If the

AHCF calculation for the ETC exceeds the revenue the ETC received from the AUSF in the 2007 revenue base, the AHCF calculation shall be the ETC's uncapped unreduced AHCF support. If the ETC's calculated AHCF support is less than the ETC's 2007 revenue base, the ETC's AHCF uncapped support in year five shall be the ETC's AHCF calculated support plus thirty-four percent (34%) of the difference between the ETC's 2007 revenue base and the ETC's calculated AHCF support; and

(f) After the five-year transition period, the AHCF administrator shall calculate each ETC's support by first calculating each ETC's uncapped AHCF support. If the total calculated support to all ETCs within a size group is less than the capped amount of the size group's part of the total AHCF, each ETC within the size group shall be entitled to its total calculated AHCF support.

(D)(i)*(a)* The cost to transition from the 2007 revenue base to the AHCF during the five-year transition period shall be funded by a combination of sources. The AHCF administrator shall reserve three million dollars ($3,000,000) from the existing AUSF surplus to assist in funding the transition period. The specific annual amounts the AHCF administrator shall use from the surplus for the transition period shall be as follows:

(1) One million dollars ($1,000,000) for year one;

(2) Seven hundred fifty thousand dollars ($750,000) for year two;

(3) Seven hundred fifty thousand dollars ($750,000) for year three;

(4) Two hundred fifty thousand dollars ($250,000) for year four; and

(5) Two hundred fifty thousand dollars ($250,000) for year five.

(b) In the event the total transition cost in a year is less than the amount scheduled to be used that year from the AUSF surplus, that excess amount shall be used to assist in funding the transition in the subsequent year or years.

(ii)*(a)* The AHCF administrator shall calculate the total support necessary to fully fund the transition cost for each specific calendar year.

(b) If the transition support from the surplus fully funds the transition costs, the AHCF administrator shall add each ETC's calculated AHCF support to any transition support to which the ETC may be entitled, and that amount shall be the ETC's uncapped AHCF support.

(c) If the surplus does not fully fund the transition costs, then each ETC participating in the size group with a total customer access base of under fifteen thousand (15,000) access lines that is not receiving transition funds shall pay a pro rata share of the remaining transition costs based upon a formula using total increase in support received by all ETCs with an increase from the 2007 revenue base to AHCF levels as the denominator and the specific ETC's increase from the 2007 revenue base to the AHCF support as the numerator. The AHCF administrator shall use that formula to calculate the pro rata

share of each ETC that is not receiving transition funds to assist in fully funding the transition costs. However, an ETC shall not be required to pay transition funding that would lower its uncapped payment from the AHCF below the ETC's funding received from the AUSF in the 2007 revenue base.

(iii) The annual transition funds provided from the AUSF surplus and the funds used in the transition are supplemental funds, are in addition to the capped funds, and are not to be considered when a cap is calculated at any time.

(E) The AHCF administrator shall apply the cap on the total AHCF and upon the specific size groups established within the AHCF annually. During the transition, the cap shall be applied as follows:

(i)*(a)(1)* The total AHCF support that is calculated to be due ETCs within each size group of the AHCF shall be calculated prior to the consideration of the transition funding. If total support due a size group, prior to transition funding, does not exceed that size group's AHCF cap, the AHCF administrator shall pay that size group's full AHCF support amount.

(2) If total support, using the AHCF formula for recipients of the specific size group exceeds the cap, the administrator shall determine the amount that the total calculated AHCF support exceeds that size group's cap.

(b) To reduce each size group's authorized support to conform to the size group's cap, the AHCF administrator shall determine total calculated AHCF support to each ETC within the size group and shall add each ETC's transition payment, if any, to establish each ETC's total calculated support within the size group. The AHCF administrator shall then use the total calculated support due all ETCs within the size group as the denominator and the amount the size group's AHCF calculation exceeds the cap as the numerator. The administrator shall then subtract from each ETC's total calculated support a pro rata portion, using the fraction established herein to reduce AHCF funding to the capped amount, based upon each ETC's total calculated support, to reduce the size group's support level to the capped AHCF amount; and

(ii)*(a)* The funds available for distribution to ETCs from the AHCF shall not exceed and are capped at twenty-two million dollars ($22,000,000) per year, the total capped fund. Cost of administrating the AHCF shall first be deducted from the total capped fund prior to allocation of funding to the ETCs. Transition funds used from the surplus during the five-year transition period are supplemental and are not subject to any cap. The annual period to be used by the AHCF administrator to adjust support levels and upon which to apply any cap shall be on the calendar year. In addition to the total fund cap, the funds available from the AHCF shall also be capped based upon size groups using access lines for loop-based ETCs and customers for customer-based ETCs. Size grouping is used to ensure funds are targeted to areas most needing high-cost assistance. For the purpose

of calculating the size grouping caps, total customer access base shall be used for loop-based ETCs and total customers for customer-based ETCs.

(b) For all ETCs with a total customer access base or total customer base of five hundred thousand (500,000) or more access lines or customers on or after December 31, 2010, the size group cap shall be thirteen and one-half percent (13.5%) of the total capped fund.

(c) For all ETCs with a total customer access base or total customer base of one hundred fifty thousand (150,000) or more access lines or customers and fewer than five hundred thousand (500,000) access lines or customers on December 31, 2010, the size group cap shall be thirteen and one-half percent (13.5%) of the total capped fund.

(d) For all ETCs with a total customer access base or total customer base of fifteen thousand (15,000) or more access lines or customers and fewer than one hundred fifty thousand (150,000) access lines or customers on December 31, 2010, the size group cap shall be two percent (2%) of the total capped fund.

(e) For all ETCs with a total customer access base or total customer base of fewer than fifteen thousand (15,000) access lines or customers, the size group cap shall be seventy-one percent (71%) of the total capped fund.

(5)(A)(i) The commission shall establish by regulation a grant program to make grants available to eligible telecommunications carriers for the extension of facilities to citizens who are not served by wire line services of an eligible telecommunications carrier. Grants may be requested by an eligible telecommunications carrier or citizens who are not served, or both.

(ii) The commission shall delegate to a trustee the administration, collection, and distribution of the Extension of Telecommunications Facilities Fund in accordance with the rules and procedures established by the commission. The trustee shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the Extension of Telecommunications Facilities Fund.

(B)(i) In establishing regulations for the grant program, the commission shall consider demonstrated need, the length of time the citizens have not been served, the households affected, the best use of the funds, and the overall need for extensions throughout the state.

(ii) The commission may require each potential customer to be served by the extension of facilities to pay up to two hundred fifty dollars ($250) of the cost of extending facilities.

(C) The plan shall be funded by customer contributions and by the Extension of Telecommunications Facilities Fund established by subdivision (e)(4)(B)(ii)*(a)* of this section.

(D)(i) The commission shall provide quarterly reports to the Legislative Council. The reports shall include, but shall not be limited to, the number of requests for grants, the number of grants awarded, the amount awarded, and the number of additional customers served.

(ii) The commission shall notify members of the General Assembly of grants made in their districts.

(E) In order to allow time for potential applicants to request grants, no grants shall be awarded for three (3) months after the effective date of the rules establishing the program.

History. Acts 1997, No. 77, § 4; 2001, No. 907, § 4; 2001, No. 1771, § 1; 2001, No. 1842, § 1; 2003, No. 1788, § 7; 2007, No. 385, §§ 1, 4; 2011, No. 290, §§ 2–4; 2011, No. 594, § 2.

A.C.R.C. Notes. Acts 2005, No. 2017, § 16, provided: "To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to maintain and reduce Arkansas Universal Service Fund (AUSF) administrative expenses and avoid mandating changes in telecommunications services that could increase AUSF assessments which would result in higher AUSF surcharges to customers."

Acts 2007, No. 385, § 1, provided:

"Legislative findings.

"The General Assembly finds that:

"(1) The development of an administratively streamlined universal service fund based upon high cost support is important public policy;

"(2) It is administratively efficient to use financial data submitted by eligible telecommunications companies to federal agencies, made under penalty of law, and when appropriate, cost proxies, for the high-cost support mechanism, to be called the "Arkansas High Cost Fund", thereby eliminating the need for extensive financial review and the high administrative costs created by such reviews;

"(3) A five-year transition from the Arkansas Universal Service Fund to the Arkansas High Cost Fund is important public policy due to the shift from a revenue replacement fund based upon current changes to a high-cost fund using financial data that is two (2) or more years old;

"(4) Due to the complex nature and ever-changing administration of telecommunications at the federal level, potential changes in how access charges are collected could disrupt support for eligible telecommunications companies serving rural areas;

"(5) Eligible telecommunications company members of the AICCLP are more adversely affected by sudden changes in regulation, access charges, and statutory changes; and"

Acts 2007, No. 785, § 15, provided: "ARKANSAS UNIVERSAL SERVICE FUND. To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to reduce the Arkansas Universal Service Fund (AUSF), and avoid mandating any additional charges or expenses for telecommunications services that could increase AUSF assessments which would result in higher AUSF surcharges to customers."

Acts 2009, No. 823, § 12, provided: "ARKANSAS HIGH COST FUND. To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to reduce the Arkansas High Cost Fund (AHCF), and avoid mandating any additional charges or expenses for telecommunications services that could increase AHCF assessments which would result in higher AHCF surcharges to customers."

Acts 2010, No. 31, § 12, provided: "ARKANSAS HIGH COST FUND. To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to reduce the Arkansas High Cost Fund (AHCF), and avoid mandating any additional charges or expenses for telecommunications services that could increase AHCF assessments which would result in higher AHCF surcharges to customers."

Acts 2011, No. 577, § 14, provided: "ARKANSAS HIGH COST FUND. To ensure that telecommunications rates are reasonable and affordable, the Arkansas Public Service Commission should take all reasonable steps necessary to reduce the Arkansas High Cost Fund (AHCF), and avoid mandating any additional charges or expenses for telecommunications services that could increase AHCF assess-

ments which would result in higher AHCF surcharges to customers."

Amendments. The 2007 amendment rewrote the section.

The 2011 amendment by No. 290 added (e)(4)(C)(ii)(c)(3); inserted "on or after December 31, 2010" in (e)(4)(C)(iii)(a) and (e)(4)(E)(ii)(b); and inserted "on December 31, 2010" in (e)(4)(E)(ii)(c) and (d).

The 2011 amendment by No. 594 subdivided (e)(1)(B); added "Except in an exchange ... services under § 23-17-408(c)" at the beginning of (e)(1)(B)(i); and substituted "Except in any exchange in which the electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services pursuant to § 23-17-408(c)" for "In any event" in (e)(1)(B)(ii).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Regulated Industries, 24 U. Ark. Little Rock L. Rev. 595.

Survey of Legislation, 2001 Arkansas General Assembly, Tax Law, 24 U. Ark. Little Rock L. Rev. 613.

23-17-405. Eligible telecommunications carrier.

(a) The incumbent local exchange carrier, its successors and assigns, that owns, maintains, and provides facilities for universal service within a local exchange area on February 4, 1997, shall be the eligible telecommunications carrier within the local exchange area.

(b) The Arkansas Public Service Commission, consistent with 47 U.S.C. § 214(e)(2), after reasonable notice and hearing, may designate other telecommunications providers to be eligible for federal Universal Service Fund or AHCF support under the following conditions:

(1)(A) The other telecommunications provider accepts the responsibility to provide service in response to any reasonable request from customers in an incumbent local exchange carrier's local exchange area using its own facilities or a combination of its own facilities and resale of another carrier's services.

(B) High-cost support under this section will not begin until the telecommunications provider offers to provide service in response to all reasonable requests for service from customers in its service area;

(2) The telecommunications provider may only receive funding for services provided in the eligible telecommunications carrier's study area using its own facilities or a combination of its own facilities and another carrier's facilities;

(3) The telecommunications provider will not receive AHCF funding at a level higher than the level of funding received by the incumbent local exchange carrier in the same area;

(4) The telecommunications provider advertises the availability and the charges for the services, using media of general distribution; and

(5) It is determined by the commission that the designation is in the public interest.

(c) In exchanges or wire centers where the commission has designated more than one (1) eligible telecommunications carrier, the commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier, consistent with

47 U.S.C. § 214(e)(4), upon a finding that at least one (1) eligible telecommunications carrier will continue to serve the area.

(d)(1)(A) For the entire area served by a rural telephone company, excluding tier one companies, for the purpose of the AHCF and the federal Universal Service Fund, there shall be only one (1) wireline eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company.

(B) Multiple wireless eligible telecommunications carriers may be designated in areas served by rural telephone companies.

(2) The rural telephone company may elect to waive its right to be the only wireline eligible telecommunications carrier within the local exchange area by filing notice with the commission.

(e) To provide universal services, an eligible telecommunications carrier may use:

(1) Commercial mobile services;

(2) Voice over Internet Protocol; and

(3) Any other technology that provides service that is the functional equivalent of commercial mobile services or Voice over Internet Protocol.

History. Acts 1997, No. 77, § 5; 2007, No. 385, § 5; 2009, No. 191, § 1.

A.C.R.C. Notes. Acts 2007, No. 385, § 1, provided:

"Legislative findings.

"The General Assembly finds that:

"(1) The development of an administratively streamlined universal service fund based upon high cost support is important public policy;

"(2) It is administratively efficient to use financial data submitted by eligible telecommunications companies to federal agencies, made under penalty of law, and when appropriate, cost proxies, for the high-cost support mechanism, to be called the "Arkansas High Cost Fund", thereby eliminating the need for extensive financial review and the high administrative costs created by such reviews;

"(3) A five-year transition from the Arkansas Universal Service Fund to the Arkansas High Cost Fund is important public policy due to the shift from a revenue replacement fund based upon current changes to a high-cost fund using financial data that is two (2) or more years old;

"(4) Due to the complex nature and ever-changing administration of telecommunications at the federal level, potential changes in how access charges are collected could disrupt support for eligible telecommunications companies serving rural areas;

"(5) Eligible telecommunications company members of the AICCLP are more adversely affected by sudden changes in regulation, access charges, and statutory changes; and"

Amendments. The 2007 amendment, in (b), substituted "The" for "Where the incumbent local exchange carrier receives AUSF support, except in areas served by rural telephone companies, the" and substituted "federal Universal Service Fund or AHCF support" for "high cost support pursuant to § 23-17-404"; inserted "in response to any reasonable request from" for "to all" in (b)(1)(A); in (b)(1)(B), deleted "has facilities in place and" following "provider" and substituted "provide service in response to all reasonable requests for service from" for "serve all"; substituted "services provided in the eligible telecommunications carrier's study area using its own facilities or a combination of its own facilities and another carrier's facilities" for "the portion of its facilities that it owns and maintains" in (b)(2); substituted "AHCF" for "AUSF" in (b)(3); added the (d)(1)(A) designation; in (d)(1)(A), substituted "AHCF" for "AUSF" and inserted "wireline" preceding "eligible"; added (d)(1)(B); inserted "wireline" preceding "eligible" in (d)(2); and deleted (d)(3).

The 2009 amendment rewrote (e).

23-17-407. Regulation of rates for basic local exchange service and switched-access service of electing companies.

(a)(1) The rates for basic local exchange service and switched-access services that were in effect in the date twelve (12) months prior to the date of filing of a notice of election by a local exchange carrier pursuant to § 23-17-406 shall be the maximum that the electing local exchange carrier may charge for the services for a period of three (3) years after the date of filing, excluding rate increases ordered by the Arkansas Public Service Commission pursuant to § 23-17-404.

(2)(A) An electing company may decrease or, subsequent to a decrease, increase up to the rate that was effective at the time of election pursuant to this section.

(B) The rate changes shall be effective immediately, without commission approval, by filing a tariff or notice with the commission.

(b)(1) After the expiration of the three-year period, the rates for basic local exchange services and switched-access services, excluding the intrastate carrier common line charge, may be adjusted by the electing company filing a price list with the commission, as long as:

(A) The rates remain at or below the inflation-based rate cap; or

(B) The rate increase results from the provision of extended area services required as the result of customer election under commission rules.

(2) Inflation shall be measured by the year-over-year percent change in the gross domestic product price index calculated by the United States Department of Commerce, or any successor to the index.

(3) The electing company is authorized to adjust the rate cap for each basic local exchange service and switched-access service by seventy-five percent (75%) of this inflation measure, adjusted for exogenous changes specified in subsection (e) of this section, and excluding rate increases ordered by the commission pursuant to § 23-17-404.

(4) The rate cap may only be adjusted one (1) time each twelve (12) months beginning at the expiration of the three-year period after the date of initial filing to be regulated pursuant to this section and §§ 23-17-406 and 23-17-408.

(c) As long as an electing company is in compliance with subsections (a) and (b) of this section, such rates are deemed just and reasonable.

(d) Notwithstanding the provisions of this section, if, at any time following the date of election pursuant to this section, another telecommunications provider is providing basic local exchange service or switched-access service within an electing company's local exchange area, the electing company within any exchange of the electing company in which another telecommunications provider is providing these services may commence determining its rates for basic local exchange service and switched-access services in the same manner that it determines its rates for services other than basic local exchange service and switched-access service, pursuant to § 23-17-408(c).

(e) As used in this section, the term "exogenous change" means a cumulative impact on a local exchange carrier's intrastate regulated

revenue, expenses, or investment of more than three percent (3%) over a twelve-month period, that is attributable to changes in federal, state, or local government mandates, rules, regulations, or statutes.

History. Acts 1997, No. 77, § 7; 2003, No. 1764, § 3; 2007, No. 385, § 6.

A.C.R.C. Notes. Acts 2007, No. 385, § 1, provided:

"Legislative findings.

"The General Assembly finds that:

"(1) The development of an administratively streamlined universal service fund based upon high cost support is important public policy;

"(2) It is administratively efficient to use financial data submitted by eligible telecommunications companies to federal agencies, made under penalty of law, and when appropriate, cost proxies, for the high-cost support mechanism, to be called the "Arkansas High Cost Fund", thereby eliminating the need for extensive financial review and the high administrative costs created by such reviews;

"(3) A five-year transition from the Arkansas Universal Service Fund to the Arkansas High Cost Fund is important public policy due to the shift from a revenue replacement fund based upon current changes to a high-cost fund using financial data that is two (2) or more years old;

"(4) Due to the complex nature and ever-changing administration of telecommunications at the federal level, potential changes in how access charges are collected could disrupt support for eligible telecommunications companies serving rural areas;

"(5) Eligible telecommunications company members of the AICCLP are more adversely affected by sudden changes in regulation, access charges, and statutory changes; and"

Amendments. The 2007 amendment deleted "the three year anniversary of" following "following" in (d).

23-17-409. Authorization of competing local exchange carriers.

(a)(1)(A) Consistent with the federal act and the provisions of § 23-17-410, the Arkansas Public Service Commission is authorized to grant certificates of convenience and necessity to telecommunications providers authorizing them to provide telecommunications services, including basic local exchange service or switched-access service, or both, to an incumbent local exchange carrier's local exchange area if and to the extent that the applications otherwise comply with state law, designate the geographic areas proposed to be served by the applicants, and the applicants demonstrate that they possess the financial, technical, and managerial capacity to provide the competing services.

(B) No telecommunications provider shall operate as a CLEC in this state without first obtaining from the commission a certificate of public convenience and necessity.

(2) Competing local exchange carriers shall be required to maintain a current tariff or price list with the commission and to make prices and terms of service available for public inspection.

(3) Retail prices of competing local exchange carriers shall not require prior review or approval by the commission.

(b)(1) Except as provided in subdivision (b) of this section, a government entity may not provide, directly or indirectly, basic local exchange, voice, data, broadband, video, or wireless telecommunication service.

(2) After reasonable notice to the public and a public hearing, a governmental entity owning an electric utility system or television

signal distribution system may provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications service and make any telecommunications capacity or associated facilities that it now owns, or may hereafter construct or acquire, available to the public upon terms and conditions as may be established by its governing authority, except the government entity may not use the telecommunications capacity or facilities to provide, directly or indirectly, basic local exchange service.

(3) Any restriction contained in this subsection shall not be applicable to the provision of telecommunications services or facilities to the extent used solely for 911, E911, or other emergency and law enforcement services, or for the provision of data, broadband, or nonentertainment video telecommunications services or facilities by or to a medical institution or institution of higher education to its students, faculty, staff, or patients, as the provision relates to academic, research, and health care information technology applications under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(4) This section does not prohibit a governmental entity from purchasing voice, data, broadband, video, or wireless telecommunications services, directly or indirectly, from a private provider through a contract administered and services managed by the Department of Information Systems under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(c) A governmental entity that operates an electric utility system may deny any telecommunications provider access to its electric utility poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis when there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(d)(1) Except to the extent required by the federal act and this subchapter, the commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing the competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service.

(2) Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.

(e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.

(f) As provided in 47 U.S.C. §§ 251 and 252, the commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions, and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC's competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers.

(g)(1) As permitted by the federal act, the commission shall approve resale restrictions that prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential customers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the federal act.

(2) The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from 47 U.S.C. § 251(c) and that are being sold for the purpose of resale shall be the retail rate of the service less any net avoided costs due to the resale.

(3) The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to its selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.

(h) Incumbent local exchange carriers shall provide competing local exchange carriers, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the federal act.

(i)(1) The commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the federal act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of 47 U.S.C. § 251.

(2) In no event shall the commission impose any interconnection requirements that go beyond those requirements imposed by the federal act or any interconnection regulations or standards promulgated under the federal act.

(j) In the event the commission is requested to arbitrate any open issues pursuant to 47 U.S.C. § 252, the parties to the arbitration proceeding shall be limited to the persons or entities negotiating the agreement.

History. Acts 1997, No. 77, § 9; 2003, No. 1788, § 8; 2011, No. 1050, § 1.

Amendments. The 2011 amendment, in (b)(1), inserted "Except as provided in subdivision (b) of this section" and "voice data, broadband, video, or wireless telecommunication"; in (b)(2), inserted "provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications service, and" and "construct or" preceding "acquire"; rewrote (b)(3); and added (b)(4).

23-17-411. Regulatory reform.

(a) Regarding the earnings, rates of return, or rate-base calculation of any electing company, any incumbent local exchange carrier that has filed notice in accordance with § 23-17-412, or any competing local exchange carrier, and provided that all such companies and carriers otherwise comply with the applicable ratemaking provisions of this subchapter, the Arkansas Public Service Commission shall not:

(1) Require the filing of any financial report, statement, or other document for the purpose of reviewing, monitoring, or regulating rate base, earnings, or rates of return; or

(2) Conduct any investigation of rate base, earnings, or rates of return.

(b) Notwithstanding the provisions of this subchapter, a rate group reclassification of an exchange from one (1) rate group to another occurring as a result of access line growth or loss of exchange access arrangements shall be allowed by the commission on request of a local exchange carrier.

(c) Consistent with the policy of telecommunications competition that is implemented with this subchapter, other than the commission's promulgation of rules and regulations required by this subchapter, the commission shall promulgate no new rule or regulation that increases regulatory burdens on telecommunications service providers, except upon a showing that the benefits of such rule or regulation are clear and demonstrable and substantially exceed the cost of compliance by the affected telecommunications service providers.

(d) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall conduct a rule-making proceeding to identify and repeal all rules and regulations relating to the provision of telecommunications service which are inconsistent with, have been rendered unnecessary by, or have been superseded by either this subchapter or the federal act.

(e) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall revise its rules so that they apply, except as expressly provided in this subchapter, equally to all providers of basic local exchange service. All future rule changes promulgated by the commission shall apply equally to all providers of basic local exchange service.

(f)(1) In order to eliminate outdated, unnecessary, and burdensome laws and regulations, electing companies, incumbent local exchange carriers filing notice under § 23-17-412, and competing local exchange carriers shall not be subject to the requirements of §§ 23-2-304(a)(1), (7), and (8), 23-2-306, 23-2-307, 23-3-101 — 23-3-107, 23-3-112, 23-3-114, 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301 — 23-3-316, 23-4-101 — 23-4-104, 23-4-107, 23-4-109, 23-4-110, 23-4-201(d), 23-4-401 — 23-4-405, and 23-4-407 — 23-4-419, or the commission's rules and regulations implementing the statutes.

(2) Notwithstanding any other provisions of law, the commission shall have no jurisdiction to impose any quality of service rules and standards or reporting, including without limitation the commission's telecommunications providers rules, on any telecommunications provider in any exchange in which an electing company is authorized under § 23-17-407(d) to determine the rates for basic local exchange service and switched-access services under § 23-17-408(c).

(g) The commission, except as provided in this subchapter with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers.

(h) The commission shall establish reasonable cost proxies, which rural telephone companies, excluding tier one companies, may use without producing company-specific cost studies, when cost studies would otherwise be required. Use of these proxies or the adoption of approved rates of nonrural telephone companies by rural telephone companies, excluding tier one companies, shall be deemed adequate proof of such rural telephone company costs.

(i) The commission may reclassify an incumbent local exchange carrier as a tier one company or a non-tier one company only upon petition by the incumbent local exchange carrier in connection with an increase or decrease in the number of the carrier's access lines in the state.

(j)(1) The unauthorized change of a customer's service to another telecommunications service provider is prohibited.

(2) To protect customers from any unauthorized changes in their choice of telecommunications service providers, no local exchange carrier shall honor a request by any person other than the customer to change the provider of intrastate long distance or local exchange service to the customer in the state, except:

(A) Where the request is placed by a local or long distance company that has provided to the local exchange carrier a letter of agency containing clear and conspicuous disclosure of the change signed by the customer authorizing the change;

(B) Where the customer affected by the change calls a toll-free number established by the company requesting the change to confirm the request for the change made in response to a contact initiated by the local exchange or long distance company requesting the change; or

(C) Where the commission otherwise expressly authorizes.

(3) Any telecommunications carrier that violates the verification procedures described in this subsection and collects charges for telecommunications services from the customer shall be liable to the carrier previously selected by the customer in an amount equal to all charges paid by the subscriber after the violation in accordance with the procedures that the commission may prescribe.

(4) The commission is also authorized to impose civil penalties, not to exceed five thousand dollars ($5,000) for any such violation.

History. Acts 1997, No. 77, § 11; 2011, No. 594, § 3.

Amendments. The 2011 amendment added (f)(2).

23-17-412. Optional alternative regulation of eligible telecommunications companies.

(a)(1) Telephone companies that file notice with the Arkansas Public Service Commission of an election to be regulated in accordance with the provisions of this section are authorized to determine and account for their respective revenues and expenses, including depreciation expenses, pursuant to generally accepted accounting principles and,

except as provided in this section, shall be subject to regulation only in accordance with this section and shall not be subject to any rate review or rate of return regulation by the commission.

(2) The companies shall file rate lists for their telecommunications services which rates shall be effective upon filing, except the rates for basic local exchange services and switched-access services, which rates shall be effective upon compliance and in accordance with the procedures in this section.

(3) Any service that is not a telecommunications service is not subject to regulation by the commission, and rates for the services need not be filed with the commission.

(b) On the effective date of an election pursuant to this section, the tariffed rates of a company electing to be subject to the provisions of this section are deemed just and reasonable and shall continue to be deemed just and reasonable as long as any increases in the company's tariffed rates are in accordance with the provisions of this section.

(c)(1) The company may increase its basic local exchange service rates after sixty (60) days' notice to all affected subscribers.

(2) Rates for basic local exchange services may be reduced and be effective immediately upon filing or at a later time specified in the filing.

(3) Notice by the company to its subscribers shall be by regular mail and may be included in regular subscriber billings and shall include the following:

(A) A schedule of the proposed basic local exchange service rate change;

(B) The effective date of the proposed basic local exchange service rate change; and

(C) An explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase and the procedure necessary to petition.

(d) The subscriber petitions provided for in this section shall be prepared as follows:

(1) Form.

(A) The petition shall be headed by a caption, which shall contain:

(i) The heading, "The Arkansas Public Service Commission";

(ii) The name of the company or cooperative seeking a change in basic local exchange service rates; and

(iii) The relief sought.

(B) A petition substantially in compliance with the form set forth in this subsection shall not be deemed invalid due to minor errors in its form;

(2) Body. The body of the petition shall consist of three (3) numbered paragraphs, if applicable, as follows:

(A) Allegations of Facts. The allegations of facts shall be stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations shall be stated in numbered subparagraphs as necessary for clarity;

(B) Relief Sought. The petition shall contain a brief statement of the amount of the change in basic local exchange service rates that is objected to or other relief sought; and

(C) Petitioners. The petition shall contain the name, address, telephone number, and signature of each subscriber signing the petition. Only the subscriber in whose name the telephone service is listed shall be counted as a petitioner. Every signature must be dated and shall have been affixed to the petition within sixty (60) days preceding its filing with the commission.

(e)(1) Exclusive of basic local exchange service rate changes pursuant to § 23-17-404, the commission shall have authority to review basic local exchange service rates set by the company only upon a formal petition that complies with subsection (d) of this section and that is signed by at least fifteen percent (15%) of all affected subscribers.

(2) If a proper petition is presented to the commission within sixty (60) days after the date of notice of the rate change was sent to affected subscribers, the commission shall accept and file the petition and, upon reasonable notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety (90) days after filing to determine if the rates as proposed are just and reasonable.

(3) Within sixty (60) days after close of the hearing, the commission may enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the basic local exchange service rates in effect at the time the new rate at issue was proposed.

(4) A company subject to this section shall not increase its rates without the approval of the commission for six (6) months after the date the commission enters the order.

(5) If the commission fails to enter any order within sixty (60) days after the close of the hearing, the petition shall be deemed denied and the rates and charges shall be deemed approved for all purposes, including the purposes of appeal.

(f) Rates for switched-access services of companies that are subject to this section shall be determined pursuant to § 23-17-407 except as provided in subsection (l) of this section and § 23-17-404.

(g) A company subject to this section may at any time file an application with the commission requesting the commission to prescribe just and reasonable rates for the company. Any rate so set may thereafter be adjusted as provided in this section.

(h) Nothing herein shall restrict any customer's right to complain to the commission regarding quality of service or the commission's authority to enforce quality-of-service rules and standards that are equally imposed on all telecommunications providers.

(i)(1) The commission on its own motion may review basic local exchange service rates of any company subject to this section if the company has increased the rates by more than the greater of fifteen

percent (15%) or two dollars ($2.00) per access line per month within any consecutive twelve-month period, excluding rate increases:

(A) Ordered by the commission pursuant to § 23-17-404; or

(B) Resulting from the provision of extended area services required as the result of customer election under commission rules.

(2) The commission shall hold and complete a hearing on the rates within ninety (90) days after first giving notice of the hearing to the company to determine if the rates as proposed are just and reasonable.

(3) Within sixty (60) days after close of the hearing, the commission may enter an order adjusting the rates and charges at issue, except that the commission may not require the company to set any rate or charge below the greater of the rates in effect at the time of the filing of the increase or the actual cost of providing such service as established by evidence received at the hearing.

(4) In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services.

(5) If the commission fails to enter any order within sixty (60) days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal.

(j)(1) For purposes of this section, the commission may not require a company that is subject to this section to set its rates below the actual cost of the company providing the service.

(2) If requested by the company, the actual cost shall be determined to include a ratable portion of administrative expenses and overhead incurred by the company in its operations and the appropriate amortization of previously deferred accounting costs.

(k) No telephone company subject to this section may change its basic local exchange service rates within ninety (90) days after entry of a final order adjusting the rate pursuant to subsections (g) and (i) of this section.

(l) Notwithstanding the provisions of this section, if at any time following the notice provided under this section another telecommunications provider is providing basic local exchange service or switched-access service within a local exchange area of the company subject to this section, the company that is subject to this section may determine its rates for basic local exchange service and switched-access service within any exchange in which another telecommunications provider is providing these services in the same manner that it determines its rates for other services pursuant to subsection (a) of this section.

(m) A telephone company electing to be regulated in accordance with this section may package any of its services with any other service it or its affiliates offer, with or without a discount, provided that basic local exchange services and switched-access services may be purchased separately at the rates that are established in accordance with this section.

History. Acts 1997, No. 77, § 12; 2003, No. 1764, § 2; 2007, No. 385, §§ 7–9.

A.C.R.C. Notes. Acts 2007, No. 385, § 1, provided:

"Legislative findings.

"The General Assembly finds that:

"(1) The development of an administratively streamlined universal service fund based upon high cost support is important public policy;

"(2) It is administratively efficient to use financial data submitted by eligible telecommunications companies to federal agencies, made under penalty of law, and when appropriate, cost proxies, for the high-cost support mechanism, to be called the "Arkansas High Cost Fund", thereby eliminating the need for extensive financial review and the high administrative costs created by such reviews;

"(3) A five-year transition from the Arkansas Universal Service Fund to the Arkansas High Cost Fund is important public policy due to the shift from a revenue replacement fund based upon current changes to a high-cost fund using financial data that is two (2) or more years old;

"(4) Due to the complex nature and ever-changing administration of telecommunications at the federal level, potential changes in how access charges are collected could disrupt support for eligible telecommunications companies serving rural areas;

"(5) Eligible telecommunications company members of the AICCLP are more adversely affected by sudden changes in regulation, access charges, and statutory changes; and"

Amendments. The 2007 amendment substituted "eligible telecommunications" for "non tier one rural telephone" in the section heading; substituted "Telephone" for "Excluding tier one companies, rural telephone" in (a)(1); deleted "rural" preceding "telephone" in (k) and (m); and deleted "three year anniversary of the" preceding "notice" in (l).

23-17-414. Extended area service.

(a) The Arkansas Public Service Commission shall promulgate rules that enable customers in a local exchange service area to petition the commission directly or by a resolution of the customers' quorum court or other local governing body to request that an incumbent local exchange carrier provide extended area service.

(b)(1) The rules relating to the provision of extended area service shall include:

(A) The procedure by which customers may petition the commission for an election on the provision of extended area service;

(B) A description of the information required for the commission to verify that the rate to be charged for providing extended area service will be just and reasonable and to verify that the rate includes an incumbent local exchange carrier's revenue that is replaced by extended area service revenue;

(C) Notice requirements to customers regarding the rate, terms, and conditions under which extended area service would be provided as a result of a scheduled election under subsection (a) of this section; and

(D) The procedure for conducting an election under subsection (a) of this section and for determining whether extended area service will be provided as a result of the election.

(2) After the initial election and adoption of extended area service, no subsequent change in the rate charged for the provision of extended area service shall be effective unless adopted under the commission's rules promulgated to implement this section.

(c) If the affected customers vote in favor of instituting or renewing extended area service under this section, the carrier shall implement extended area service at a rate that is consistent with subdivision (b)(1)(B) of this section.

History. Acts 2003, No. 1764, § 4.

23-17-415. Reporting of originating intrastate interexchange telephone numbers.

(a) Where technically feasible, any telecommunications provider whose customer originates or forwards an intrastate interexchange message to be terminated over the public switched telecommunications network in Arkansas shall transmit the jurisdictionally appropriate telephone number of the originating party sending the message to the terminating telecommunications provider.

(b)(1) The Arkansas Public Service Commission shall investigate complaints alleging violations of this section filed under § 23-3-119 and may obtain sufficient information to determine the correct jurisdiction of any message associated with alleged violations of this section.

(2) If the commission determines that the jurisdictionally appropriate telephone number has not been transmitted as required by this section, the telecommunications provider against whom the complaint was filed shall demonstrate that it had a legitimate business purpose for not transmitting the jurisdictionally appropriate telephone number or that it was technically infeasible for the provider to transmit the number.

(c)(1) If the commission determines that a telecommunications provider has violated this section, the commission shall determine the amount of underpayment to any telecommunications provider as a result of the violation and shall order the violating telecommunications provider to make payment under the applicable tariff or interconnection agreement, including any penalties specified therein.

(2) If no penalties are specified under either the applicable tariffs or interconnection agreements, the commission shall assess a civil sanction against the violating telecommunications provider consistent with state law.

History. Acts 2003, No. 1766, § 1.

23-17-416. Arkansas instrastate carrier common line.

(a)(1) Except as provided in § 23-17-404(e)(4)(D)(i)(*b*), beginning January 1, 2004, intrastate carrier common line charges billed to ILECs and underlying carriers shall be determined at the rate of one and sixty-five hundredths cents (1.65¢) per intrastate access minute.

(2) The carrier common line charge is not a tax and is not affected by state laws governing taxation.

(b)(1) Each underlying carrier's monthly payment to the AICCLP shall include the sum of the underlying carrier's share of the AICCLP's

net revenue requirement for the remaining incumbent local exchange carriers, the underlying carrier's portion of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, and the AICCLP administrative expenses.

(2) Each underlying carrier's monthly payment to the AICCLP shall be based upon the underlying carrier's proportionate share of Arkansas intrastate telecommunications services revenues and special intrastate ILEC revenues to the total Arkansas intrastate telecommunications services revenue and special intrastate ILEC revenues of all underlying carriers.

(3)(A)(i) An exiting ILEC that experiences a fixed carrier common line revenue shortfall for its carrier common line net revenue requirements may recover the shortfall through increases in local rates based on the total customer access base of the exiting company.

(ii) AICCLP members shall recover their carrier common line net revenue requirement by AICCLP rate adjustment and through the AICCLP.

(iii) If the fixed carrier common line revenue shortfall is distributed throughout the total customer access base, then each independent ILEC within the total customer access base shall receive from the distribution its share of the shortfall.

(B) An exiting ILEC that seeks to recover its carrier common line revenue shortfall is not required to recover equally from each class of customers.

(C)(i) An exiting ILEC may recover its fixed carrier common line revenue shortfall from any intrastate rate other than access charges.

(ii) Any AICCLP member may recover its AICCLP rate adjustment from any intrastate rate other than access charges.

(D) An exiting ILEC that reduces its carrier common line charge of one and sixty-five hundredths cents (1.65¢) may recover the shortfall through increases in local rates.

(4) This section shall not limit a carrier's ability to adjust its rates under § 23-17-406, § 23-17-407, or § 23-17-408.

(5) This section shall not limit a carrier's ability to increase its local rates under § 23-17-412.

(6) Any AICCLP rate adjustment charge shall not limit an AICCLP member's ability to adjust rates under § 23-17-412.

(7)(A) No toll reseller shall be required to pay to an ILEC or to the AICCLP any portion of an underlying carrier's common line net revenue obligation unless the ILEC is the toll reseller's underlying carrier.

(B) Unless agreed to otherwise between the toll reseller and the ILEC, if an ILEC is a toll reseller's underlying carrier, then the toll reseller shall report the special intrastate ILEC revenue to the administrator and shall pay all amounts due the AICCLP for the revenue.

(c)(1) The Arkansas Public Service Commission shall adopt all rules relating to the membership, operation, management, and administration of the AICCLP as it will be constituted after December 31, 2003.

(2) The commission may adopt rules under subdivision (c)(1) of this section after it appoints the members of the Arkansas Intrastate Carrier Common Line Pool Advisory Procedural Board and selects an AICCLP administrator.

(d) The commission may terminate a carrier's certificate of convenience and necessity if the carrier fails to comply with AICCLP procedures or fails to make a payment due under this section.

(e)(1) The commission shall choose an AICCLP administrator on or before June 1, 2003.

(2) The administrator shall manage the collection and distribution of the carrier common line net revenue requirements in accordance with the rules and procedures established by the commission and consistent with this section.

(3) The administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AICCLP membership.

(4) The administrator shall determine the total monthly amount due to the AICCLP from AICCLP members, exiting ILECs, and underlying carriers, based upon the sum of the monthly carrier common line net revenue requirement of AICCLP members, funding requirements for the Arkansas Calling Plan Fund and the Extension of Telecommunications Facilities Fund, and the AICCLP administrative fees.

(5) The administrator shall provide monthly and annual reports to the commission concerning the operation of the AICCLP.

(6) Any information considered proprietary by the administrator shall be treated as confidential unless the commission determines that the administrator erred in the determination.

(7) The AICCLP administrator and the Arkansas Universal Service Fund administrator may share confidential information to determine the amounts due or the accuracy of information submitted by ILECs and underlying carriers.

(8)(A) Any ILEC that was designated as a non-tier one ILEC under Acts 1997, No. 77, as of December 31, 1997, and had fewer than fifty thousand (50,000) access lines as of December 31, 1997, shall be eligible to be a member of the AICCLP beginning January 1, 2004.

(B)(i) Based on its total customer access base, the maximum that a non-tier one company under subdivision (e)(8)(A) of this section may draw shall be one million three hundred thousand dollars ($1,300,000) annually.

(ii) If a non-tier one company under subdivision (e)(8)(A) of this section is entitled to receive more than one million three hundred thousand dollars ($1,300,000) annually, then the administrator shall assess a prorated charge to each ILEC associated with the total customer access base that is based upon the ILEC's proportionate share of the total net revenue requirement of all ILECs within the total customer base.

(f)(1) Beginning January 1, 2004, no ILEC that had a total customer access base of more than fifty thousand (50,000) access lines as of December 31, 1997, shall be a member of AICCLP.

(2) An ILEC that had a total customer access base of fifty thousand (50,000) or fewer access lines as of December 31, 1997, may terminate its membership in the AICCLP after sixty (60) days' notice to the commission and the administrator and may not thereafter again become a member of the AICCLP.

(g)(1) If an ILEC terminates its membership in the AICCLP after January 1, 2004, its total customer access base must exit the pool as a single unit.

(2) If an ILEC terminates its membership in the AICCLP after January 1, 2004, its fixed carrier common line revenue shortfall shall be calculated using relevant data from the data development period identified in subdivision (h)(4)(B)(ii) of this section.

(h)(1) The administrator shall determine the amounts to be paid to AICCLP members on a monthly basis and shall determine any fixed or varying amounts due the pool from AICCLP members, exiting ILECs, and underlying carriers.

(2) The administrator shall provide notice to AICCLP members, other ILECs, and underlying carriers concerning calculations related to each entity and shall bill all carriers for any amounts due the pool.

(3) The administrator shall use the appropriate data development period to determine the calculations for AICCLP members' carrier common line net revenue requirement.

(4)(A) For each ILEC exiting the pool on December 31, 2003, the administrator shall use the appropriate data to determine the payment that the exiting ILECs shall pay the pool to fund their portion of the Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund.

(B)(i) Except for AICCLP members exiting the pool after January 1, 2004, the data development period for all ILECs shall be the ILECs' billing months of June, July, and August 2003.

(ii) If an AICCLP member exits the AICCLP after January 1, 2004, its data development period to determine the ILEC's fixed carrier common line revenue shortfall shall be the three-month period immediately preceding its exit.

(i) No later than the twenty-second day or the next business day thereafter of July 2003, if the twenty-second day falls on a weekend or holiday, and no later than the twenty-second day or the next business day of each month thereafter, if the twenty-second day falls on a weekend or holiday, each underlying carrier and AICCLP member shall report to the administrator its previous month's data necessary for AICCLP calculations.

(j)(1) On December 31, 2003, and the last business day of each month thereafter, the administrator shall cause notice to be sent to each underlying carrier, AICCLP member, and exiting ILEC the amount due, based on the previous month's data as submitted to the administrator.

(2) Each underlying carrier, AICCLP member, and exiting ILEC shall remit payment due under subdivision (j)(1) of this section to the administrator by no later than the last business day of the following month.

(3) The administrator shall make all reasonable efforts to ensure that AICCLP members receive payment of their monthly net carrier common line revenue requirement by February 10, 2004, and by the tenth day of each month thereafter.

History. Acts 2003, No. 1788, § 9.

23-17-417. Arkansas Intrastate Carrier Common Line Pool Advisory Procedural Board.

(a) The Arkansas Intrastate Carrier Common Line Pool Advisory Procedural Board is not a government entity under Arkansas law and shall not be considered a government entity for any purpose.

(b) The Arkansas Public Service Commission shall adopt all rules relating to the operation of the board that are reasonably necessary to implement this section.

(c) The board shall serve in an advisory capacity and may:

(1) Propose tariffs and rules to the commission;

(2) Propose amendments to its procedures for the operation, administration, and audit of the AICCLP;

(3) Advise the commission on other matters reasonably related to the operation of the AICCLP and the board;

(4) Meet by teleconference or by other technological means; and

(5) Provide recommendations and reports to the commission.

(d) The board shall be composed of two (2) representatives of underlying carriers and five (5) representatives of ILECs who are members of the AICCLP as follows:

(1) The two (2) underlying carriers' representatives shall be the first two (2) willing representatives of the largest underlying carriers, as determined by the AICCLP administrator, based upon the carriers' portion of the Arkansas intrastate telecommunications service revenues and special intrastate ILEC revenues;

(2)(A) The commission shall determine the appropriate underlying carrier and ILEC member representatives on or before June 1 of each year.

(B) The commission shall approve any ILEC representative if the proposed representative's name is submitted by a two-thirds (⅔) majority of all ILEC members of the AICCLP for any open ILEC position on the board; and

(3)(A) The five (5) ILEC representatives of AICCLP members shall be willing representatives of ILECs who are members of the AICCLP.

(B)(i) The five (5) ILEC representatives will serve staggered five-year terms with the terms to be determined by lot at the first meeting of the board.

(ii) A representative may serve unlimited terms.

(C) No ILEC or underlying carrier may be represented by more than one (1) board member.

(e) The board shall begin operations as of the date the commission appoints the first administrator.

History. Acts 2003, No. 1788, § 9.

CHAPTER 18

LIGHT, HEAT, AND POWER UTILITIES

SUBCHAPTER.

A.C.R.C. Notes. References to "this chapter" in subchapters 1 through 5 may not apply to subchapters 6 through 9 which were enacted subsequently.

Subchapter 1 — General Provisions

SECTION.

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by

the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 648, § 2: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the rates paid by customers of public utilities have been affected and will continue to be affected in a manner that is burdensome to the families of Arkansas and harmful to economic development because of the actions of public utilities and that the Arkansas Public Service Commission needs to be immediately authorized to require public utilities to withdraw from system wide planning in order to protect Arkansas customers from higher public utility costs. Therefore, an emergency is declared to exist and this act being immediately necessary for the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-18-101. Areas of service.

(a) Notwithstanding any provisions of law or the terms of any certificate of convenience and necessity, franchise, permit, license, or other authority granted to a public utility or electric cooperative corporation by the state or a municipality, no public utility or electric cooperative corporation shall furnish or offer to furnish electric service at retail and not for resale in any area allocated by the Arkansas Public Service Commission to another electric cooperative corporation or public utility.

(b) No later than ninety (90) days after February 21, 2003, the commission shall commence a rulemaking proceeding to identify and to repeal or amend all rules and regulations adopted by the commission to facilitate, or in anticipation of, retail electric competition that are inconsistent with, have been rendered unnecessary by, or have been superseded by this act.

History. Acts 1935, No. 324, § 41; Pope's Dig., § 2104; Acts 1957, No. 103, § 3; 1967, No. 234, § 5; A.S.A. 1947, § 73-240; 2003, No. 204, § 10.

Publisher's Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Meaning of "this act". Acts 2003, No. 204, codified as §§ 4-9-102, 4-9-109, 4-9-301, 23-2-304, 23-3-102, 23-3-201, 23-4-209, 23-18-subch. 1 note, 23-18-101, 23-18-103, 23-18-104, 23-18-106, 23-18-107, 23-18-511, 23-18-519.

CASE NOTES

Municipal Utilities.

The statute did not apply to prevent a municipal utility from taking facilities, customers, and property in an area annexed by a city as a municipality or a municipal improvement district is not a "public utility" within the meaning of the statute. Craighead Elec. Coop. Corp. v. City Water & Light Plant, 278 F.3d 859 (8th Cir. 2002).

23-18-103. Purchase of electricity from affiliated company.

(a) As used in this section:

(1) "Affiliated company" means any business entity which is owned wholly or partly by an electric utility or which wholly or partly owns an electric utility, or any business entity which is owned by another business entity which wholly or partly owns an electric utility; and

(2) "Electric utility" means an electric utility subject to the jurisdiction of the Arkansas Public Service Commission.

(b) Without the prior approval of the commission, no electric utility shall enter into any agreement for the purchase of electricity from an affiliated company.

(c) Any agreement entered into in violation of this section shall be void.

(d) The commission shall promulgate such regulations as are necessary to implement this section.

(e) This section shall apply to agreements entered into on or after June 28, 1985.

History. Acts 1985, No. 173, §§ 1-5; A.S.A. 1947, §§ 73-278 — 73-278.4; Acts 1999, No. 1556, § 7; 2001, No. 324, §§ 3, 4; 2003, No. 204, § 4.

Publisher's Notes. Acts 2001, No. 324, § 4, which repealed this section effective October 1, 2003, was repealed by Acts 2003, No. 204, § 4.

Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

23-18-104. Construction of power-generating facilities outside the state.

(a) No public utility subject to the jurisdiction of the Arkansas Public Service Commission shall commence construction of any power-generating facility to be located outside the boundaries of this state without the express written approval of the commission.

(b) Any public utility proposing such construction shall render adequate written notice to the commission of its intent in order that the commission may conduct any germane inspection, investigation, public hearing, or take any other action deemed appropriate by the commission.

(c) Failure on the part of any public utility to obtain prior approval of the commission, as established in this section, shall constitute grounds for disallowance by the commission of all costs and expenses associated with the construction and subsequent operation of the facility when computing the utility's cost of service for purposes of any rate-making proceedings.

(d) Any electric utility which does not own in whole or in part another electric utility and which is not owned in whole or in part by a holding company and which derives less than twenty-five percent (25%) of its total revenues from Arkansas customers is exempt from the provisions of this section.

History. Acts 1985, No. 328, §§ 1-4; 1985, No. 918, §§ 1-4; A.S.A. 1947, §§ 73-279 — 73-279.3; Acts 1999, No. 1556, § 8; 2001, No. 324, §§ 5, 6; 2003, No. 204, § 5.

Publisher's Notes. Acts 2001, No. 324, § 6, which repealed this section effective October 1, 2003, was repealed by Acts 2003, No. 204, § 5.

Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

23-18-106. Regulation of resource planning, asset acquisition, and alternative retail services.

(a) The Arkansas Public Service Commission shall have the authority to adopt rules and regulations under which electric utilities shall seek commission review and approval of the processes, actions, and plans by which the utilities:

(1) Engage in comprehensive resource planning;

(2) Acquire electric energy, capacity, and generation assets; or

(3) Utilize alternative methods to meet their obligations to serve Arkansas retail electric customers.

(b) With regard to electric cooperatives formed under the Electric Cooperative Corporation Act, § 23-18-301 et seq., to the extent that an electric distribution cooperative purchases electricity from an electric generation and transmission cooperative pursuant to a wholesale power contract, the authority granted to the commission by subdivisions (a)(1) and (2) of this section shall not extend to the electric distribution cooperative to the extent of such purchases but shall only extend to the electric generation and transmission cooperative.

(c) Subsection (a) of this section does not apply to any transaction involving the acquisition of generation assets, which is closed and finalized prior to the adoption of the rules and regulations authorized in subsection (a) of this section, or within one (1) year after February 21, 2003, whichever comes later, and which is the subject of an order or ruling of any federal or state regulatory agency issued on or before January 1, 2003.

(d)(1)(A) Reasonable and prudent costs incurred in compliance with subsection (a) of this section and in compliance with the provisions of § 23-3-201 et seq. and the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq. shall be eligible for recovery in the rates of any electric utility making such an acquisition, subject to final approval by the commission.

(B) When the utility establishes that the costs were incurred in compliance with subsection (a) of this section, a rebuttable presumption is established that the costs were reasonable and prudent and incurred in the public interest.

(2) Nothing in this subsection shall be deemed to supersede the provisions of § 23-4-103.

(e) The commission may require an electric public utility that is owned by a public utility holding company, as defined by section 1262 of the Energy Policy Act of 2005, Pub. L. No. 109-58, and engages in

centralized system-wide resource planning to withdraw from centralized system-wide resource planning if:

(1) The commission determines that centralized system-wide resource planning is not in the public interest; and

(2) The electric public utility's withdrawal from centralized system-wide resource planning is not otherwise prohibited by law.

History. Acts 2003, No. 204, § 11; 2007, No. 648, § 1.

Publisher's Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment added (e).

23-18-107. Ratemaking policies for cost of acquisition or construction of incremental resources.

(a) The Arkansas Public Service Commission may adopt ratemaking policies appropriate to allow utilities to recover from their customers the reasonable and prudent costs and a reasonable return associated with the acquisition or construction by electric utilities of incremental resources.

(b) Nothing in this section shall be deemed to supersede the provisions of § 23-4-103.

History. Acts 2003, No. 204, § 11.

Publisher's Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Cross References. Rates, rules, and regulations to be reasonable, § 23-4-103.

Subchapter 2 — Electric Cooperatives Generally

23-18-201. Jurisdiction of Arkansas Public Service Commission generally.

Electric cooperative corporations generating, manufacturing, purchasing, acquiring, transmitting, distributing, selling, furnishing, and disposing of electric power and energy in this state pursuant to the Electric Cooperative Corporation Act, § 23-18-301 et seq., shall be subject to the general jurisdiction of the Arkansas Public Service Commission in the same manner and to the same extent as provided by law for the regulation, supervision, or control of public utilities except as provided in this subchapter.

History. Acts 1967, No. 234, § 1; A.S.A. 1947, § 73-202.1.

Publisher's Notes. This section is being set out to reflect a name change.

23-18-202. Jurisdiction of Arkansas Public Service Commission — Exemptions.

(a) The jurisdiction of the Arkansas Public Service Commission shall not extend to loans made or guaranteed by the Rural Electrification Administration of the United States Department of Agriculture, the Federal Financing Bank, or such other agency or instrumentality as may be established by the United States Government for those purposes, nor shall it extend to loans made or guaranteed by the National Rural Utilities Cooperative Finance Corporation.

(b) No approval shall be required from the commission for borrowings, loan contracts, notes, mortgages, or guarantees to which the Rural Electrification Administration, the Federal Financing Bank, or such other agency or instrumentality described above, or the National Rural Utilities Cooperative Finance Corporation or CoBank ACB is a party, nor shall approval be required for borrowings, loan contracts, notes, mortgages, or guarantees from other public or private sources which are secured by a mortgage held in common with or guaranteed by the Rural Electrification Administration, the Federal Financing Bank, or such other agency or instrumentality described above, or the National Rural Utilities Cooperative Finance Corporation or CoBank ACB.

History. Acts 1967, No. 234, § 2; 1981, No. 353, § 1; A.S.A. 1947, § 73-202.2; Acts 2009, No. 789, § 1.

Amendments. The 2009 amendment inserted "or CoBank ACB" in two places in (b).

Subchapter 3 — Electric Cooperative Corporation Act

SECTION.
23-18-327. Nonprofit operation — Use of revenues.

Effective Dates. Acts 2003, No. 334, § 2: Mar. 6, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Arkansas law does not specifically exclude unclaimed capital credits of electric cooperatives from the laws governing unclaimed property; that the General Assembly has excluded the unclaimed capital credits of other cooperative organizations from the laws governing unclaimed property; that the obligation to report and deliver unclaimed capital credits places an undue economic burden on electric cooperative corporations and their members; and that this act is immediately necessary to relieve the electric cooperatives and their members of this financial burden. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-18-302. Definitions.

CASE NOTES

Construction with Other Laws.

A municipal utility could take facilities, customers, and property in an area annexed by a city, notwithstanding that former subdivision (8), now repealed, stood for the general proposition that an electric cooperative could not be ousted from its assigned area, as § 14-207-103 specifically allowed a municipal utility to condemn the facilities, distribution properties, and customers of an electric cooperative. Craighead Elec. Coop. Corp. v. City Water & Light Plant, 278 F.3d 859 (8th Cir. 2002).

23-18-327. Nonprofit operation — Use of revenues.

(a) Each corporation shall be operated without profit to its members, but the rates, fees, rents, or other charges for electric energy and any other facilities, supplies, equipment, or services furnished by the corporation shall be sufficient at all times:

(1) To pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized; and

(2) For the creation of reserves.

(b) The revenues of the corporation shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations. Thereafter, the revenues shall be devoted to such reserves for improvement, new construction, depreciation, and contingencies as the board may from time to time prescribe.

(c) Revenues not required for the purposes set forth in subsection (b) of this section shall be returned from time to time to the members on a pro rata basis according to the amount of business done with each during the period either in cash, in abatement of current charges for electric energy, or otherwise as the board determines, but return may be made by way of general rate reduction to members if the board so elects.

(d) If a corporation organized under this subchapter declares a capital credit and any capital credit remains unclaimed after notice thereof was transmitted to the last known address of the beneficiary of the unclaimed capital credit, the unclaimed capital credit shall not be deemed unclaimed or abandoned property under the Unclaimed Property Act, § 18-28-201 et seq.

History. Acts 1937, No. 342, § 25; Pope's Dig., § 2339; A.S.A. 1947, § 77-1125; Acts 2003, No. 334, § 1.

CASE NOTES

Claim Dismissed for Failure to Exhaust Administrative Remedies.

When an electric cooperative's customers alleged the utility failed to refund patronage capital to the customers, the customers' claims were properly dismissed due to the customers' failure to seek relief from the Arkansas Public Service Commission (APSC) because (1) it was alleged that the cooperative violated

a duty to pay capital credits "on a reasonable and systematic basis," (2) the main relief sought was a refund of those credits, (3) the APSC had primary jurisdiction over claims that the cooperative violated this section and was authorized by § 23-3-119(d) to order appropriate prospective relief, and (4) the customers' claims were not private damage claims based on tort, contract, or property law. Capps v. Carroll Elec. Coop. Corp., 2011 Ark. 48, — S.W.3d — (2011).

When an electric cooperative's customers who were Missouri residents alleged the utility failed to refund patronage capital to the customers, the customers' claims were properly dismissed due to the customers' failure to seek relief from the Arkansas Public Service Commission (APSC) because (1) the customers did not allege a claim under Missouri law, and (2) the claims were based on an alleged failure of the cooperative to comply with Arkansas law, specifically this section. Capps v. Carroll Elec. Coop. Corp., 2011 Ark. 48, — S.W.3d — (2011).

Subchapter 5 — Utility Facility Environmental and Economic Protection Act

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Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The

date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2007, No. 658, § 6: Mar. 28, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that in the immediate future the United States Secretary of Energy may designate portions of Arkansas as a national interest electric transmission corridor; that such a designation could result in the federal preemption of state law; and that this act is necessary to provide a means for the construction of transmission facilities that are less onerous than under federal law. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 910, § 13: Apr. 1, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that recent decisions by the Arkansas Court of Appeals and the Arkansas Supreme Court have pointed out the need for the General Assembly to clarify its intentions regarding the certification and authorization of the location, financing, construction, and operation of major utility facilities; and that this act is immediately necessary to provide for the continued economic development of the state and the orderly and efficient development of essential energy resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-18-502. Legislative findings — Intent — Purpose.

(a)(1) The General Assembly finds and declares that there is at present and will continue to be a growing need for electric and gas public utility services that will require the construction of major new facilities.

(2) It is recognized that the facilities cannot be built without affecting in some way the physical environment in which the facilities are located and without the expenditure of massive amounts of capital.

(3) It is also recognized that the future economic development of the state requires the ready availability of public utility energy resources to serve industrial, commercial, and residential customers.

(b) The General Assembly further finds that it is essential to the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the state that the new facilities might cause and to minimize the economic costs to the people of the state of obtaining reliable, clean, safe, and adequate energy supplies.

(c)(1) The General Assembly further finds that laws and practices relating to the location, financing, construction, and operation of the utility facilities should provide for the protection of environmental

values, encourage the development of alternative renewable and nonrenewable energy technologies that are energy-efficient, and take into account the total cost to society of the facilities, including without limitation the cost of providing safe, reliable, and cost-effective energy resources.

(2)(A) Without further clarification, present laws may result in undue costly delays in new construction, may encourage the development of energy technologies that are relatively inefficient, and may increase costs, which will eventually be borne by the people of the state in the form of higher utility rates.

(B) Interpretations of existing laws could threaten the ability of utilities to meet the needs of the people of the state for economical and reliable utility service, and thus, the existing laws require further clarification.

(d) Furthermore, the General Assembly finds that there should be provided an adequate opportunity for individuals, groups interested in energy and resource conservation and the protection of the environment, state and regional agencies, local governments, and other public bodies to participate in timely fashion in decisions regarding the location, financing, construction, and operation of major utility facilities.

(e)(1) The General Assembly, therefore, declares that it is the purpose of this subchapter to provide an exclusive forum with primary and final jurisdiction, except as provided in §§ 23-18-505 and 23-18-506, for the expeditious resolution of all matters concerning the location, financing, construction, and operation of a major utility facility in a single proceeding to which access will be open to individuals, groups, state and regional agencies, local governments, and other public bodies to enable them to participate in these decisions.

(2) The matters identified in subdivision (e)(1) of this section that were formerly under the jurisdiction of multiple state, regional, and local agencies are declared to be of statewide interest.

(f) It is the intent of the General Assembly to provide for the expeditious and efficient review of the siting of major utility facilities.

History. Acts 1973, No. 164, § 2; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.1; Acts 2011, No. 910, § 1.

Amendments. The 2011 amendment added (a)(3); in (c)(1), substituted "provide for the protection of" for "be strengthened to protect" and inserted "including without limitation the cost of providing safe, reliable, and cost-effective energy resources"; inserted "Without further clarification" in (c)(2)(A); deleted "and practices" following "laws" in (c)(2)(A) and (c)(2)(B); in (c)(2)(B), inserted "Interpretations of" at the beginning and "and thus, the existing laws require further clarification" at the end; inserted "utility" near the end of (d); in (e)(1), substituted "an exclusive forum with primary and final jurisdiction" for "a forum with exclusive and final jurisdiction" and substituted "a major utility facility" for "electric generating plants and electric and gas transmission lines and associated facilities"; substituted "identified in subdivision (e)(1) of this section that were formerly" for "presently" in (e)(2); and added (f).

CASE NOTES

Proceedings.

Arkansas Public Service Commission erred in granting a Certificate of Environmental Compatibility and Public Need to a power company for the construction of a facility under the Utility Facility and Economic Protection Act, Ark. Code Ann. §§ 23-18-501 — 530, where it erroneously resolved the need for the facility in a separate Needs Docket. Hempstead County Hunting Club, Inc. v. Ark. PSC, 2010 Ark. 221, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 375 (June 24, 2010).

23-18-503. Definitions.

As used in this subchapter:

(1) "Applicant" means the utility or other person making application to the Arkansas Public Service Commission for a certificate of environmental compatibility and public need;

(2)(A) "Commence to construct" means any clearing of land, excavation, or other action that would adversely affect the natural environment of the site or route of a major utility facility.

(B) "Commence to construct" does not include:

(i) Changes needed for temporary use of sites or routes for nonutility purposes; or

(ii) Uses in securing survey or geological data, including necessary borings to ascertain foundation conditions;

(3) "Commission" means the Arkansas Public Service Commission;

(4) "Energy-efficient" means economical in the use of energy;

(5) "Energy resource declaration-of-need proceeding" means a utility-specific proceeding conducted by the Arkansas Public Service Commission under §§ 23-18-106 and 23-18-107 and the rules and regulations adopted thereunder to determine the need for additional energy supply and transmission resources by a public utility;

(6) "Major utility facility" means:

(A) An electric generating plant and associated transportation and storage facilities for fuel and other facilities designed for or capable of operation at a capacity of fifty megawatts (50 MW) or more;

(B) For the sole purpose of requiring an environmental impact statement under this subchapter, an electric transmission line and associated facilities including substations of:

(i) A design voltage of one hundred kilovolts (100 kV) or more and extending a distance of more than ten (10) miles; or

(ii) A design voltage of one hundred seventy kilovolts (170 kV) or more and extending a distance of more than one (1) mile; or

(C) For the sole purpose of requiring an environmental impact statement under this subchapter, a gas transmission line and associated facilities designed for or capable of transporting gas at pressures in excess of one hundred twenty-five pounds per square inch (125 psi) and extending a distance of more than one (1) mile except gas pipelines devoted solely to the gathering of gas from gas wells constructed within the limits of any gas field as defined by the Oil and Gas Commission;

(7) "Merchant generator" means a person or entity, including an affiliate of a public utility, engaged directly or indirectly through one (1) or more affiliates, that is in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale;

(8) "Merchant transmission provider" means a person or entity that owns or operates facilities used for the transmission of electric energy and whose rates or charges are not subject to the jurisdiction of the commission;

(9) "Municipality" means any county or municipality within the state;

(10) "National interest electric transmission corridor" means an area of the state found by the United States Secretary of Energy to be experiencing electric energy transmission capacity constraints or congestion and therefore designated as a national interest electric transmission corridor by the United States Secretary of Energy under the authority granted by section 1221(a) of the Energy Policy Act of 2005, Pub. L. No. 109-58;

(11) "Nonrenewable energy technology" or "nonrenewable energy sources" means any technology or source of energy that depends upon the use of depletable fossil fuels such as oil, gas, and coal;

(12) "Person" includes an individual, group, firm, partnership, corporation, cooperative association, municipality, government subdivision, government agency, local government, or other organization;

(13) "Public utility" or "utility" means a person engaged in the production, storage, distribution, sale, delivery, or furnishing of electricity or gas, or both, to or for the public, as defined in § 23-1-101(9)(A)(i) and (B), but does not include an exempt wholesale generator as defined in § 23-1-101(5);

(14) "Regional transmission organization" means an entity approved by the Federal Energy Regulatory Commission to plan and operate facilities for the transmission of electric energy within a designated region; and

(15) "Renewable energy technology" means any technology or source of energy that is not depletable, including without limitation solar, wind, biomass conversion, hydroelectric, or geothermal.

History. Acts 1973, No. 164, § 3; 1977, No. 866, § 1; 1979, No. 245, § 1; A.S.A. 1947, § 73-276.2; Acts 1999, No. 1322, § 2; 2007, No. 658, § 1; 2011, No. 910, § 2.

Amendments. The 2007 amendment inserted present (6), (7), (9), and (13), and redesignated the remaining subdivisions accordingly; and made a related change.

The 2011 amendment inserted (2)(B) and present (5) and redesignated the remaining subdivisions accordingly; substituted "(125 psi)" for "(125 lbs. psi)" in (6)(C); and, in (15), substituted "including without limitation" for "such as" and inserted "hydroelectric."

U.S. Code. Section 1221(a) of the Energy Policy Act of 2005, Pub.L. No. 109-58, referred to in subdivision (9), is compiled as 16 U.S.C. § 824p.

CASE NOTES

Cited: Hempstead County Hunting Club, Inc. v. Ark. PSC, 2009 Ark. App. 511, 324 S.W.3d 697 (2009).

23-18-504. Exemptions — Waiver.

(a) This subchapter does not apply to a major utility facility:

(1) For which, before July 24, 1973, an application for the approval of the major utility facility was made to any federal, state, regional, or local governmental agency that possesses the jurisdiction to consider the matters prescribed for finding and determination in § 23-18-519(a) and (b);

(2) For which, before July 24, 1973, the Arkansas Public Service Commission issued a certificate of convenience and necessity or otherwise approved the construction of the major utility facility;

(3) Over which an agency of the federal government has exclusive jurisdiction;

(4) A majority of which is owned by one (1) or more exempt wholesale generators as defined in § 23-1-101(5); or

(5) That is a major utility facility for generating electric energy, if the majority of the major utility facility is owned by any person, including without limitation a public utility that will not recover the cost of the major utility facility in rates subject to regulation by the commission.

(b)(1)(A) A person intending to construct a major utility facility excluded or exempted from this subchapter may elect to waive the exclusion or exemption by delivering notice of the waiver to the commission.

(B) The filing of an application by a public utility under § 23-18-511 is not a notice of waiver or an election to waive an exclusion or exemption.

(C) The responsibility for determining whether a proposed major utility facility is exempt from the requirements of this subchapter is within the primary and exclusive jurisdiction of the commission.

(2) Upon the commission's receipt of the notice of an election to waive the exclusion or exemption, this subchapter shall thereafter apply to each major utility facility identified in the notice.

(c) A public utility *owning* a minority interest in an exempt major utility facility shall not be entitled to recover its costs of ownership or operation in rates subject to the jurisdiction of the Arkansas Public Service Commission without first obtaining the right to own and operate a portion of the major utility facility under a certificate of public convenience and necessity under §§ 23-3-201 — 23-3-206.

History. Acts 1973, No. 164, § 4; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.3; Acts 1999, No. 1322, § 3; 2011, No. 910, § 3.

Amendments. The 2011 amendment in (a)(1), inserted "major utility" preceding "facility" and substituted "that" for "which agency"; in (a)(2), inserted "major utility"; substituted "A majority of which is owned" for "That is owned" in (a)(4);

rewrote (a)(5); substituted "a major utility facility" for "any utility facility" in (b)(1)(A); inserted (b)(1)(B) and (b)(1)(C); rewrote (b)(2); and added (c).

23-18-506. Arkansas Department of Environmental Quality's and Arkansas Pollution Control and Ecology Commission's jurisdiction unaffected by subchapter.

(a) This subchapter does not affect the:

(1) Jurisdiction of the Arkansas Department of Environmental Quality or the Arkansas Pollution Control and Ecology Commission with respect to water and air pollution control or other matters within the jurisdiction of the department or the Arkansas Pollution Control and Ecology Commission; and

(2) Requirement that a person apply for and obtain a permit from the department as provided by the Arkansas Water and Air Pollution Control Act, §§ 8-4-101 — 8-4-106, 8-4-201 — 8-4-229, and 8-4-301 — 8-4-313.

(b) This subchapter does not confer upon the Arkansas Public Service Commission any authority or jurisdiction conferred by law upon the department or the Arkansas Pollution Control and Ecology Commission.

(c) Notwithstanding the exemption provisions of § 23-18-504, each major utility facility constructed in Arkansas is subject to the environmental rules and regulations of the state and federal regulatory bodies having jurisdiction over the air, water, and other environmental impacts associated with the major utility facility.

History. Acts 1973, No. 164, § 19; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.18; Acts 1999, No. 1164, § 179; 2011, No. 910, § 4.

Amendments. The 2011 amendment inserted "and Arkansas Pollution Control and Ecology Commission's" in the section heading; subdivided the section as (a) and (b); inserted "or the Arkansas Pollution Control and Ecology Commission" twice in (a)(1) and in (b); and added (c).

23-18-507. Authority of Arkansas Public Service Commission.

(a) Nothing in this subchapter shall be deemed to confer upon the Arkansas Public Service Commission power or jurisdiction to regulate or supervise the rates, service, or securities of any person not otherwise subject to the commission's jurisdiction.

(b) The commission, in the discharge of its duties under this subchapter or any other act, is authorized to make joint investigations, hold joint hearings in or outside the state, and to issue joint or concurrent orders in conjunction or concurrence with any official or agency of any other state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise.

(c) In the discharge of its duties under this subchapter, the commission is further authorized to negotiate and enter into agreements or

compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certification, construction, financing, operation, and maintenance of major utility facilities in accord with the purposes of this subchapter and for the enforcement of the respective state laws regarding them.

(d) The commission is deemed to be the agency of the State of Arkansas that shall be the member of any regional hearing authority or commission created by the terms of any compact between Arkansas and other states or between Arkansas and the United States otherwise concerning the implementation of this subchapter, except as may be provided by §§ 23-18-505 and 23-18-506.

(e) It is the intent of the General Assembly to confer upon the commission, under this subchapter, broad rule-making authority adequate to enable it to comply with any requirements imposed by state or federal legislation dealing with the subject matter of this subchapter upon state-administered certification programs and to enable it to comply with any state or federal requirements for facilitating the issuance of tax-exempt bonds should their issuance be authorized.

(f)(1) Under §§ 23-18-106 and 23-18-107 and the rules and regulations adopted thereunder, the commission may determine the need for additional energy supply and transmission resources by public utilities in an energy resource declaration-of-need proceeding.

(2) A determination of need under subdivision (f)(1) of this section shall be deemed the basis for the need for the construction of a major utility facility to be sited and constructed under this subchapter.

History. Acts 1973, No. 164, §§ 14, 18; 1977, No. 866, § 1; A.S.A. 1947, §§ 73-276.13, 73-276.17; Acts 2011, No. 910, § 5.

Amendments. The 2011 amendment added (f).

23-18-508. Rules and regulations.

The Arkansas Public Service Commission shall have and is granted the power and authority to make and amend from time to time after reasonable notice and hearing reasonable rules and regulations establishing exemptions from some or all of the requirements of this subchapter for the construction, reconstruction, or expansion of any major utility facility which is unlikely to have major adverse environmental or economic impact by reason of length, size, location, available space, or right-of-way on or adjacent to existing utility facilities and similar reasons.

History. Acts 1973, No. 164, § 4; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.3.

Publisher's Notes. This section is being set out to reflect a punctuation change.

23-18-510. Certificate of environmental compatibility and public need — Requirement — Exceptions.

(a) No person shall commence to construct a major utility facility in the state, except those exempted as provided in subsection (c) of this

section and §§ 23-18-504(a) and 23-18-508, without first having obtained a certificate of environmental compatibility and public need, hereafter called a "certificate", issued with respect to the facility by the Arkansas Public Service Commission. The replacement or expansion of an existing transmission facility with a similar facility in substantially the same location or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing capacity shall not constitute construction of a major utility facility if no increase in width of right-of-way is required.

(b) No entity, including but not limited to, a person, public utility, utility, regional transmission organization, municipality, merchant transmission provider, merchant generator, or other entity, whether regulated or not by the commission, shall commence to construct a major electric transmission facility, as defined in § 23-18-503, within a national interest electric transmission corridor without first having obtained a certificate of environmental compatibility and public need issued with respect to such a facility by the commission.

(c) Nothing in this subchapter shall be construed to require a certificate under this subchapter or an amendment thereof for:

(1) Reconstruction, alteration, or relocation of any major utility facility which must be reconstructed, altered, or relocated because of the requirements of any federal, state, or county governmental body or agency for purposes of highway transportation, public safety, or air and water quality; or

(2) Any major electric transmission facility to be constructed or operated by a municipal electric system that is located within the territorial limits of such municipal electric utility system.

(d) Any entity granted a certificate pursuant to subsection (b) of this section shall have the right of eminent domain as provided by Arkansas law for the limited purpose of constructing the certificated major electric transmission facility to the extent that the facility is located within a national interest electric transmission corridor.

History. Acts 1973, No. 164, § 4; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.3; Acts 2007, No. 658, § 2.

Amendments. The 2007 amendment inserted present (b), redesignated former (b) as present (c), added (c)(2) and (d), and made related and stylistic changes.

23-18-511. Application for certificate — Contents generally.

An applicant for a certificate shall file with the Arkansas Public Service Commission a verified application in the form required by the commission and containing the following information:

(1) A general description of the location and type of the major utility facility proposed to be built;

(2) A general description of any reasonable alternate location or locations considered for the proposed facility;

(3) A statement of the need and reasons for construction of the facility, including, if applicable, a reference to any prior commission

action in an energy resource declaration-of-need proceeding determining the need for additional energy supply or transmission resources by the public utility;

(4) A statement of the estimated costs of the major utility facility and the proposed method of financing the construction of the major utility facility;

(5)(A) A general description of any reasonable alternate methods of financing the construction of the major utility facility and a description of the comparative merits and detriments of each alternate financing method considered.

(B) If at the time of filing of the application the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed major utility facility for the applicant by a state financing agency, the application shall also include a discussion of the merits and detriments of financing the major utility facility with the bonds;

(6) An analysis of the projected economic or financial impact on the applicant and the local community in which the major utility facility is to be located as a result of the construction and the operation of the proposed major utility facility;

(7) An analysis of the estimated effects on energy costs to the consumer as a result of the construction and operation of the proposed major utility facility;

(8)(A) An exhibit containing an environmental impact statement that fully develops the four (4) factors listed in subdivision (8)(B) of this section, treating in reasonable detail such considerations, if applicable, as:

(i) The proposed major utility facility's direct and indirect effect on the following in the area in which the major utility facility is to be located:

(a) The ecology of the land, air, and water environment;

(b) Established park and recreational areas; and

(c) Any sites of natural, historic, and scenic values and resources of the area in which the major utility facility is to be located; and

(ii) Any other relevant environmental effects.

(B) The environmental impact statement shall state:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects that cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location considered for the major utility facility;

(iv) For generating plants, the energy production process considered;

(v) A statement of the reasons why the proposed location and production process were selected for the major utility facility; and

(vi) Any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented;

(9) The interstate benefits expected to be achieved by the proposed construction or modification of an electric transmission line and asso-

ciated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor; and

(10) Such other information of an environmental or economic nature as the applicant may consider relevant or as the commission may by regulation or order require.

History. Acts 1973, No. 164, § 5; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.4; Acts 1999, No. 1556, § 9; 2001, No. 324, §§ 7, 8; 2003, No. 204, §§ 12, 13; 2007, No. 658, § 3; 2009, No. 164, § 7; 2011, No. 910, § 6.

Publisher's Notes. Acts 2001, No. 324, § 7, repealed the amendment by Acts 1999, No. 1556 that was to become effective January 1, 2002. The 1999 amendment would have added exceptions in (3), (4), (5)(A) and (7), and inserted a new subdivision.

Acts 2003, No. 204, §§ 12 and 13, repealed the amendment by Acts 2001, No. 324, § 8, that was to become effective October 1, 2003. The 2001 amendment would have added exceptions in (3), (4), (5)(A) and (7); and inserted a new subdivision which read: "In the case of a major utility facility as defined by § 23-18-503(5)(B), the effect of the proposed facility on competition for the sale of electric generation in the state or region."

Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment inserted present (9), redesignated former (9) as (10), and made related changes.

The 2009 amendment, in (9), substituted "as described in" for "as defined by," and inserted "that is located."

The 2011 amendment inserted "major utility" preceding "facility" throughout the section; inserted "including ... by the public utility" in (3); inserted "the following in the area in which the major utility facility is to be located" in (8)(A)(i); inserted "considered for the major utility facility" in (8)(B)(iii); and, in (9), substituted "an electric transmission line and associated facilities" for "a major electric transmission facility" and substituted "§ 23-18-503(6)(B)" for "§ 23-18-503(5)(B)."

CASE NOTES

Proceedings.

There was a lack of substantial evidence supporting the Arkansas Public Service Commission's determination that there was a basis of the need for an ultra-supercritical, pulverized coal-fired plant where the environmental impact statement failed to sufficiently address alternatives in reasonable detail, evidence of alternative locations, alternative energy production processes, alternative fuels, or carbon dioxide emissions was lacking, and evidence upon which the Commission could have made findings on the nature of the probable economic impact of the facility was lacking. Hempstead County Hunting Club, Inc. v. Ark. PSC, 2010 Ark. 221, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 375 (June 24, 2010).

23-18-513. Application for certificate — Service or notice of application.

(a) Each application for a certificate of environmental compatibility and public need shall be accompanied by proof of service of a copy of the application on:

(1) The mayor of each municipality;

(2) The county judge;

(3) The chair of the county planning board, if any;

(4) Any head of a governmental agency charged with the duty of protecting the environment or of planning land use, upon which the

Arkansas Public Service Commission has by regulation or order directed that service be made, in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed;

(5) Each member of the General Assembly in whose district the facility or any alternative location listed in the application is to be located;

(6) The office of the Governor; and

(7) The director or other administrative head of the following state agencies or departments:

(A) Arkansas Department of Environmental Quality;

(B) Department of Health;

(C) Arkansas Economic Development Commission;

(D) Arkansas State Highway and Transportation Department;

(E) Arkansas State Game and Fish Commission;

(F) Arkansas Natural Heritage Commission;

(G) Any state agency which may have the authority to assist in financing the applicant's facility;

(H) Any other state agency or department which manages or has jurisdiction over state-owned lands on which all or part of the proposed utility facility is to be or may be located;

(I) Department of Finance and Administration;

(J) State Energy Conservation and Policy Office [abolished];

(K) Attorney General; and

(L) Any other state agency or department designated by commission regulation or order; and

(8) Proof that a copy of the application has been made available for public inspection at all public libraries in each county in which the proposed utility facility is to be or may be located.

(b) The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed and a notice that interventions or limited appearances must be filed with the commission within thirty (30) days after the date set forth as the date of filing, unless good cause is shown pursuant to § 23-18-517.

(c)(1) Each application shall also be accompanied by proof that written notice specifying the date on or about which the application is to be filed and the date that interventions or limited appearances must be filed with the commission, unless good cause is shown pursuant to § 23-18-517, has been sent by certified mail to each owner of real property on the proposed route selected by the utility on which a major utility facility is to be located or constructed.

(2) The written notice required by this subsection shall be directed to the address of the owner of the real property as it appears on the records in the office of the county sheriff or county tax assessor for the mailing of statements for taxes as provided in § 26-35-705.

(d)(1) Each application shall also be accompanied by proof that public notice of the application was given to persons residing in municipalities and counties entitled to receive notice under subsection (a) of this section by the publication in a newspaper having substantial circulation in the municipalities or counties of:

(A) A summary of the application;

(B) A statement of the date on or about which it is to be filed; and

(C) A statement that intervention or limited appearances shall be filed with the commission within thirty (30) days after the date stated in the notice, unless good cause is shown under § 23-18-517.

(2)(A) For purposes of this subsection, an environmental impact statement submitted as an exhibit to the application need not be summarized, but the published notice shall include a statement that the impact statements are on file at the office of the commission and available for public inspection or are available electronically on the commission's website.

(B) The applicant shall also cause copies of the environmental impact statement to be furnished to at least one (1) of its local offices, if any, in the counties in which any portion of the major utility facilities are to be located, both as primarily or as alternatively proposed, to be there available for public inspection.

(C) The published notice shall contain a statement of the location of the local offices described in subdivision (d)(2)(B) of this section and the times the impact statements will be available for public inspection.

(e) Inadvertent failure of service on or notice to any of the municipalities, counties, governmental agencies, or persons identified in subsections (a) and (c) of this section may be cured pursuant to orders of the commission designed to afford such persons adequate notice to enable their effective participation in the proceedings.

(f) In addition, after filing, the commission may require the applicant to serve notice of the application or copies thereof, or both, upon such other persons and file proof thereof, as the commission may deem appropriate.

(g) Where any personal service or notice is required in this section, the service may be made by any officer authorized by law to serve process, by personal delivery, or by certified mail.

History. Acts 1973, No. 164, § 5; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.4; Acts 1997, No. 540, § 88; 1999, No. 1164, § 180; 1999, No. 1351, § 1; 2011, No. 910, § 7.

Amendments. The 2011 amendment added "or are available electronically on the commission's website" at the end of (d)(2)(A); inserted "major utility" in (d)(2)(B); inserted "described in subdivision (d)(2)(B) of this section" in (d)(2)(C).

23-18-516. Hearing on application or amendment.

(a)(1) Upon receipt of an application complying with §§ 23-18-511 — 23-18-514, the Arkansas Public Service Commission shall promptly fix a date for the commencement of a public hearing thereon, which date shall be not fewer than forty (40) days nor more than one hundred eighty (180) days after the receipt of the application, and shall conclude the proceedings as expeditiously as practicable.

(2) The testimony presented at such hearing may be presented in writing or orally, provided that the commission may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(b)(1) On an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the commission affirmatively finds from the application, within thirty (30) days from the date of filing, that the proposed change in the facility would result in any material increase in any environmental or economic impact of the facility or that a substantial change will occur in the location of all or a portion of the facility other than as provided in the alternates set forth in the original application.

(2) If the commission does not make such a finding by order within thirty (30) days after filing the application for amendment, the amendment shall become effective and the certificate shall be deemed to be amended as requested.

History. Acts 1973, No. 164, § 6; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.5; Acts 2007, No. 658, § 4.

Amendments. The 2007 amendment substituted "one hundred eighty (180) days" for "ninety (90) days" in (a)(1).

23-18-517. Parties to certification proceedings.

(a) The parties to a certification proceeding shall include:

(1) The applicant;

(2) Each municipality, county, and government agency or department or other person entitled to receive service of a copy of the application under § 23-18-513(a) if it has filed with the Arkansas Public Service Commission a notice of intervention as a party within thirty (30) days after service; or

(3) A person residing in a municipality or county that is entitled to receive service of a copy of the application under § 23-18-513(a) or any domestic nonprofit corporation formed in whole or in part to promote conservation or natural beauty, to promote energy conservation, to protect the environment, personal health, or other biological values, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located if the:

(A) Person or organization has an interest that may be directly affected by the commission's action;

(B) Interest is not adequately represented by other parties; and

(C) Person or corporation has petitioned the commission for leave to intervene as a party within thirty (30) days after the date given in the public notice as the date of filing the application.

(b)(1) Any person may make a limited appearance in the proceeding by filing a verified statement of position within thirty (30) days after the date given in the public notice as the date of filing the application.

(2) No person making a limited appearance shall be a party or shall have the right to receive further notice or to cross-examine witnesses on any issue outside the scope of its statement of position.

(3) The person making a limited appearance is subject to being called for cross-examination only on the subject matter of the statement of position by the applicant or other party. If the person fails to appear for cross-examination, if called, the statement of position may be stricken from the record at the discretion of the commission.

(c) Every notice of intervention and petition to intervene shall be in writing and shall comply with all procedural rules of the commission, and shall contain clear and concise statements of the nature of the right or interest of the petitioner or intervenor in the proceeding, the specific objections of the petitioner or intervenor to the applicant's proposal, the grounds and issues of fact and law upon which petitioner or intervenor wishes to be heard, and any other reasonable information which may be required by rule or order of the commission.

(d) For good cause shown, the commission may grant a petition for leave to intervene as a party or to make a limited appearance and to participate in subsequent phases of the proceeding, filed by any person who failed to file a timely notice of intervention or petition for leave to intervene, as the case may be, whose interests the commission finds are not otherwise adequately represented by another party and whose participation will not delay the proceedings, if the intervention or limited appearance is filed and served at least ten (10) days in advance of the date the hearing on the application is scheduled to commence.

History. Acts 1973, No. 164, § 7; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.6; Acts 2009, No. 752, § 1; 2011, No. 910, § 8.

Amendments. The 2009 amendment consolidated (a)(3) and (a)(4) and made related changes.

The 2011 amendment substituted "§ 23-18-513(a)" for "§ 23-18-513(a) and (b)" in (a)(2) and (a)(3); and subdivided (a)(3).

23-18-519. Decision of commission — Modifications of application.

(a)(1) The Arkansas Public Service Commission shall render a decision upon the record either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the location, financing, construction, operation, or maintenance of the major utility facility as the commission may deem appropriate.

(2) The record may include by reference the findings of the commission in an energy resource declaration-of-need proceeding that the utility needs additional energy supply resources or transmission resources.

(b) The commission shall not grant a certificate for the location, financing, construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the commission, unless it finds and determines:

(1)(A) The basis of the need for the major utility facility.

(B) In determining the basis of the need for the major utility facility, the commission may rely upon the commission's determination in an energy resource declaration-of-need proceeding that the

utility needs additional energy supply resources or transmission resources;

(2) That the major utility facility will serve the public interest, convenience, and necessity;

(3) The nature of the probable environmental impact of the major utility facility;

(4) That the major utility facility represents an acceptable adverse environmental impact, considering the state of available technology, the requirements of the customers of the applicant for utility service, the nature and economics of the proposal, any state or federal permit for the environmental impact, and the various alternatives, if any, and other pertinent considerations;

(5) The nature of the probable economic impact of the major utility facility;

(6) That the major utility facility financing method either as proposed or as modified by the commission represents an acceptable economic impact, considering economic conditions and the need for and cost of additional public utility services;

(7) In the case of an electric transmission line, that the major utility facility is not inconsistent with plans of other electric systems serving the state that have been filed with the commission;

(8) In the case of a gas transmission line, that the location of the line will not pose an undue hazard to persons or property along the area to be traversed by the line;

(9) That the energy efficiency of the major utility facility has been given significant weight in the decision-making process;

(10) That the location of the major utility facility as proposed conforms as closely as practicable to applicable state, regional, and local laws and regulations issued thereunder, except that the commission may refuse to apply all or part of any regional or local law or regulation if it finds that, as applied to the proposed major utility facility, the law or regulation is unreasonably restrictive in view of the existing technology, factors of cost or economics, or the needs of consumers whether located inside or outside of the directly affected government subdivisions;

(11) The interstate benefits expected to be achieved by the proposed construction or modification of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor; and

(12) That any conditions attached to a certificate for the construction or modification of an electric transmission line and associated facilities, as described in § 23-18-503(6)(B), that is located within a national interest electric transmission corridor do not interfere with reduction of electric transmission congestion in interstate commerce or render the project economically infeasible.

(c)(1) If the commission determines that the location or design of all or a part of the proposed facility should be modified, it may condition its certificate upon the modification, provided that the municipalities,

counties, and persons residing therein affected by the modification shall have been given reasonable notice thereof, if the persons, municipalities, or counties have not previously been served with notice of the application.

(2) If the commission requires in the case of a transmission line that a portion thereof shall be located underground in one (1) or more areas, the commission, after giving appropriate notice and an opportunity to be heard to affected ratepayers, shall have the power and authority to authorize the adjustment of rates and charges to customers within the areas where the underground portion of the transmission line is located in order to compensate for the additional costs, if any, of the underground construction.

(d)(1) If the commission determines that financing of all or part of the proposed facility should be modified, it may condition its certificate upon the modification.

(2) If at the time of filing the application or within sixty (60) days thereafter, the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed facility for the applicant and if the commission determines that financing the facility with such tax-exempt bonds would be in the best interests of the people of the state, the commission, after giving appropriate notice and an opportunity to be heard to the parties, shall have the power and authority to require by order or regulation that the facility be financed in such manner as may be provided elsewhere by law.

(e) A copy of the decision and any order issued therewith shall be served upon each party within sixty (60) days after the conclusion of each hearing held under this subchapter.

History. Acts 1973, No. 164, § 9; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.8; Acts 1999, No. 1556, § 10; 2001, No. 324, §§ 9, 10; 2003, No. 204, §§ 14, 15; 2007, No. 658, § 5; 2009, No. 164, § 8; 2011, No. 910, § 9.

Publisher's Notes. Acts 2001, No. 324, § 9, repealed the amendment by Acts 1999, No. 1556 that was to become effective January 1, 2002. The 1999 amendment added exceptions in (b)(1), (b)(2), and (b)(8), and rewrote (b)(6).

Acts 2003, No. 204, §§ 14 and 15, repealed the amendment by Acts 2001, No. 324, § 10, that was to become effective October 1, 2003. The 2001 amendment added exceptions in (b)(1), (b)(2), and (b)(6), and rewrote (b)(9) to read: "In the case of a major utility facility as defined by § 23-18-503(5)(B), the effect of the proposed facility on competition for the sale of electric generation in the state or regions."

Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Amendments. The 2007 amendment added (b)(11) and (12), and made related changes.

The 2009 amendment, in (b)(11) and (12), substituted "described" for "defined," and inserted "(5)(B), that is."

The 2011 amendment inserted (a)(2) and (b)(1)(B); inserted "major utility" preceding "facility" throughout the section; inserted "any state or federal permit for the environmental impact" in (b)(4); substituted "an electric transmission line and associated facilities" for "a major electric transmission facility" in (b)(11) and (b)(12); and substituted "§ 23-18-503(6)(B)" for "§ 23-18-503(5)(B)" in (b)(11) and (b)(12).

CASE NOTES

Proceedings.

There was a lack of substantial evidence supporting the Arkansas Public Service Commission's determination that there was a basis of the need for an ultra-supercritical, pulverized coal-fired plant where the environmental impact statement failed to sufficiently address alternatives in reasonable detail, evidence of alternative locations, alternative energy production processes, alternative fuels, or carbon dioxide emissions was lacking, and evidence upon which the Commission could have made findings on the nature of the probable economic impact of the facility was lacking. Hempstead County Hunting Club, Inc. v. Ark. PSC, 2010 Ark. 221, — S.W.3d — (2010), rehearing denied, — Ark. —, — S.W.3d —, 2010 Ark. LEXIS 375 (June 24, 2010).

23-18-521. Issuance of certificate — Effect.

(a) A certificate to construct and operate a major utility facility may be issued only under this subchapter.

(b)(1) A certificate issued under this subchapter to an applicant is in lieu of and exempts the applicant from the requirements of obtaining a certificate of convenience and necessity under § 23-3-201 et seq.

(2) A certificate issued under this subchapter entitles the applicant to a permit under § 23-3-501 et seq. without any further notice or hearing if the applicant has filed with the Arkansas Public Service Commission the consent or authorization required by § 23-3-504(7) and paid the damages stated in § 23-3-501 et seq.

History. Acts 1973, No. 164, §§ 4, 9; 1977, No. 866, § 1; A.S.A. 1947, §§ 73-276.3, 73-276.8; Acts 2011, No. 910, § 10.

Amendments. The 2011 amendment inserted "to construct and operate a major utility facility" in (a); and subdivided (b).

23-18-524. Rehearing — Judicial review.

CASE NOTES

Cited: Hempstead County Hunting Club, Inc. v. Ark. PSC, 2010 Ark. 221, — S.W.3d — (2010).

23-18-525. Jurisdiction of courts.

Except as stated in §§ 23-18-505, 23-18-506, and 23-18-524, a court of this state does not have jurisdiction to:

(1) Hear or determine an issue, case, or controversy concerning a matter that was or could have been determined in a proceeding under this subchapter before the Arkansas Public Service Commission; or

(2) Stop or delay the financing, construction, operation, or maintenance of a major utility facility except to enforce compliance with this subchapter or the provisions of a certificate issued under this subchapter after the exhaustion of administrative remedies before the commission.

History. Acts 1973, No. 164, § 12; 1977, No. 866, § 1; A.S.A. 1947, § 73-276.11; Acts 2011, No. 910, § 11.

Amendments. The 2011 amendment subdivided the section; and added "after the exhaustion of administrative remedies before the commission" in (2).

23-18-530. Treatment of major utility facility generating plant.

Except as provided under § 23-18-504(a), electric utility systems or facilities owned by a municipal electric consolidated authority created under the Arkansas Municipal Electric Utility Interlocal Cooperation Act of 2003, § 25-20-401 et seq., shall be subject to this subchapter.

History. Acts 2003, No. 366, § 7; 2007, No. 475, § 1.

Amendments. The 2007 amendment deleted "Proposals of authority" from the section heading; in (a), added "Except as provided under § 23-18-504(a)" at the beginning and substituted "subject to this subchapter" for "subject to the Utility Facility Environmental and Economic Protection Act, § 23-18-501 et seq., and except with regard to major utility facilities consisting of generating plants as defined in § 23-18-503(5)(A), subsections (b)-(f) of this section shall apply"; and deleted former (b) through (f).

23-18-531, 23-18-532. [Repealed.]

Publisher's Notes. These sections, concerning powers of an authority and regulation of an authority, were repealed by Acts 2007, No. 475, §§ 2, 3. The sections were derived from the following sources:

23-18-531. Acts 2003, No. 366, § 7; 2005, No. 1962, § 105.

23-18-532. Acts 2003, No. 366, § 7

Subchapter 6 — Arkansas Renewable Energy Development Act of 2001

SECTION.

Effective Dates. Acts 2007, No. 1026, § 3: January 1, 2008.

23-18-603. Definitions.

As used in this subchapter:

(1) "Commission" means the Arkansas Public Service Commission or other appropriate governing body for an electric utility as defined in subdivision (2) of this section;

(2) "Electric utility" means a public or investor-owned utility, an electric cooperative, municipal utility, or any private power supplier or

marketer that is engaged in the business of supplying electric energy to the ultimate consumer or any customer classes within the state;

(3) "Net excess generation" means the amount of electricity that a net-metering customer has fed back to the electric utility that exceeds the amount of electricity used by that customer during the applicable period;

(4) "Net metering" means measuring the difference between electricity supplied by an electric utility and the electricity generated by a net-metering customer and fed back to the electric utility over the applicable billing period;

(5) "Net-metering customer" means an owner of a net-metering facility;

(6) "Net-metering facility" means a facility for the production of electrical energy that:

(A) Uses solar, wind, hydroelectric, geothermal, or biomass resources to generate electricity, including, but not limited to, fuel cells and micro turbines that generate electricity if the fuel source is entirely derived from renewable resources;

(B) Has a generating capacity of not more than twenty-five kilowatts (25 kW) for residential use or three hundred kilowatts (300 kW) for any other use;

(C) Is located in Arkansas;

(D) Can operate in parallel with an electric utility's existing transmission and distribution facilities; and

(E) Is intended primarily to offset part or all of the net-metering customer requirements for electricity; and

(7) "Renewable energy credit" means the environmental, economic, and social attributes of a unit of electricity, such as a megawatt hour, generated from renewable fuels that can be sold or traded separately.

History. Acts 2001, No. 1781, § 3; 2007, No. 1026, § 1.

Amendments. The 2007 amendment substituted "As used in" for "For the purposes of" in the introductory language; inserted present (3) and (7), and redesignated the remaining subdivisions accordingly; substituted "residential use or three hundred kilowatts (300 kW) for any other use" for "residential or one hundred kilowatts (100 kw) for commercial or agricultural use" in present (6)(B); and made related changes.

23-18-604. Authority of Arkansas Public Service Commission.

(a) An electric utility shall allow net-metering facilities to be interconnected using a standard meter capable of registering the flow of electricity in two (2) directions.

(b) Following notice and opportunity for public comment, the Arkansas Public Service Commission:

(1) Shall establish appropriate rates, terms, and conditions for net-metering contracts, including a requirement that metering equipment be installed to both accurately measure the electricity supplied by the electric utility to each net-metering customer and also to accurately

measure the electricity generated by each net-metering customer that is fed back to the electric utility over the applicable billing period;

(2) May authorize an electric utility to assess a net-metering customer a greater fee or charge of any type, if the electric utility's direct costs of interconnection and administration of net metering outweigh the distribution system, environmental, and public policy benefits of allocating the costs among the electric utility's entire customer base;

(3) Shall require electric utilities to credit a net-metering customer with any accumulated net excess generation in the next applicable billing period;

(4) May expand the scope of net metering to include additional facilities that do not use a renewable energy resource for a fuel or may increase the peak limits for individual net-metering facilities, if so doing results in desirable distribution system, environmental, or public policy benefits; and

(5) Shall provide that:

(A) Any net excess generation credit remaining in a net-metering customer's account at the close of an annual billing cycle shall expire; and

(B) Any renewable energy credit created as the result of electricity supplied by a net-metering customer is the property of the net-metering customer that generated the renewable credit.

History. Acts 2001, No. 1781, § 4; 2007, No. 1026, § 2.

Amendments. The 2007 amendment substituted "electric utility" for "electric utility that offers residential or commercial electrical service, or both" in (a); in (b), inserted present (3) and (5) and redesignated former (3) as present (4); and made related changes.

Subchapter 7 — Arkansas Clean Energy Development Act

23-18-701. Legislative findings and declaration of purpose.

(a) The General Assembly finds that it is in the public interest to require all electric and natural gas public utilities subject to the jurisdiction of the Arkansas Public Service Commission to consider clean energy and the use of renewable energy resources as part of any resource plan or natural gas procurement plan.

(b) The purpose of this subchapter is to ensure that all electric and natural gas public utilities subject to the jurisdiction of the Arkansas Public Service Commission will consider clean energy and the use of renewable resources as a part of any resource plan or natural gas procurement plan.

History. Acts 2007, No. 755, § 1; 2011, No. 735, § 1.

Amendments. The 2011 amendment inserted "all" in (a); and inserted "and natural gas" and "or natural gas procurement plan" in (a) and (b).

23-18-702. Public utilities required to consider clean energy resources.

All electric and natural gas public utilities subject to the jurisdiction of the Arkansas Public Service Commission shall consider clean energy and the use of renewable resources as part of any resource plan or natural gas procurement plan.

History. Acts 2007, No. 755, § 1; 2011, No. 735, § 2.

Amendments. The 2011 amendment inserted deleted "Electric" at the beginning of the section head; and inserted "and natural gas" and "or natural gas procurement plan."

23-18-703. Authority of Arkansas Public Service Commission.

(a)(1) The Arkansas Public Service Commission may consider, propose, develop, solicit, approve, implement, and monitor measures by electric and natural gas public utilities subject to its jurisdiction that cause the electric and natural gas public utilities to incur costs of service and investments that utilize, generate, or involve clean energy resources or renewable energy resources, or both.

(2)(A) The commission may encourage or require electric and natural gas public utilities subject to its jurisdiction to consider clean energy or renewable energy resources, or both, as part of any resource plan or natural gas procurement plan.

(B) If the commission approves the use of a clean energy resource or renewable energy resource in the form of a biofuel by an electric or natural gas public utility in a manner that displaces an energy equivalent of fossil fuels, the use of the clean energy resource or renewable energy resource may:

(i) Be included as part of the electric or natural gas public utility's energy efficiency or conservation program under the Energy Conservation Endorsement Act of 1977, § 23-3-401 et seq.; and

(ii) Apply toward the satisfaction of the electric or natural gas public utility's energy efficiency or conservation goals established by the commission or by law.

(3) After proper notice and hearings, the commission may approve any clean energy resource or renewable energy resource that it determines to be in the public interest.

(4) If the commission determines that the cost of a clean energy resource or renewable energy resource is in the public interest, the commission may allow the affected electric or natural gas public utility to implement a temporary surcharge or utilize an existing commission-approved cost-recovery mechanism to recover the appropriate costs of such a resource until the implementation of new rate schedules in connection with the electric or natural gas public utility's next general rate filing in which such costs can be included in the electric or natural

gas public utility's base rate schedules or for continued recovery through an approved appropriate tariff.

(b) Nothing in this subchapter shall be construed as limiting or diminishing the authority of the commission to order, require, promote, or engage in any other energy resource practices or procedures.

History. Acts 2007, No. 755, § 1; 2009, No. 164, § 9; 2011, No. 735, § 3.

Amendments. The 2009 amendment substituted "electric public utilities" for "companies" in (a)(1); inserted "electric public" preceding "utility's" twice in (a)(4); and made minor stylistic changes.

The 2011 amendment inserted "and natural gas" twice in (a)(1); inserted "or natural gas procurement plan" at the end of (a)(2)(A); inserted (a)(2)(B); in (a)(4), inserted "or natural gas" three times, inserted "or utilize an existing commission-approved cost-recovery mechanism," substituted "recover the appropriate costs" for "recover a portion of the costs," and added "or for continued recovery through an approved appropriate tariff" at the end.

Subchapter 8 — Broadband Over Power Lines Enabling Act

23-18-801. Title.

This subchapter shall be known and may be cited as the "Broadband Over Power Lines Enabling Act".

History. Acts 2007, No. 739, § 1.

23-18-802. Definitions.

As used in this subchapter and §§ 14-200-101, 18-15-503, 18-15-504, and 18-15-507:

(1) "Broadband affiliate" or "affiliate" means an entity that is at least ten percent (10%) owned or controlled, directly or indirectly, by the electric utility formed to provide regulated or nonregulated broadband services;

(2) "Broadband Internet service provider" means an entity that provides Internet broadband services to others on a wholesale basis or to end-use customers on a retail basis;

(3) "Broadband operator" means an entity that owns or operates a broadband system on the electric power lines and related facilities of an electric utility;

(4) "Broadband services" means the provision of regulated or nonregulated connectivity to a high-speed, high-capacity transmission medium that can carry signals from multiple independent network carriers over electric power lines and related facilities, whether above or below ground;

(5) "Broadband system" means the materials, equipment, and other facilities installed to facilitate the provision of broadband services;

(6) "Electric delivery system" means the power lines and related facilities used by an electric utility to deliver electric energy;

(7) "Electric utility" means a public utility as defined under § 23-1-101 that produces, generates, transmits, delivers, or furnishes electricity to or for the public for compensation;

(8) "Nonregulated broadband services" means broadband services and technologies that are not provided for the operational performance of an electric utility, including without limitation, the provision of broadband services at wholesale or at retail; and

(9) "Regulated broadband services" means broadband services and technologies that are used and useful for the operational performance and service reliability of an electric utility, including without limitation:

(A) Automated meter reading;

(B) Real-time system monitoring;

(C) Remote service control;

(D) Outage detection and restoration;

(E) Predictive maintenance and diagnostics; and

(F) Monitoring and enhancement of power quality.

History. Acts 2007, No. 739, § 1.

23-18-803. Permissible broadband systems.

(a) An electric utility, an affiliate of an electric utility, or a person unaffiliated with an electric utility may own, construct, maintain, and operate a broadband system and provide broadband services on an electric utility's electric delivery system consistent with the requirements of this subchapter.

(b) This subchapter does not require an electric utility to implement a broadband system, provide broadband services, or allow others to install broadband facilities or use the electric utility's facilities to provide broadband services.

(c) An electric utility, a broadband affiliate, or a broadband operator may elect to install and operate a broadband system on part or all of its electric delivery system in any part or all of its certificated service territory.

History. Acts 2007, No. 739, § 1.

23-18-804. Ownership and operation of broadband system.

(a) An electric utility may:

(1) Own or operate a broadband system on the electric utility's electric delivery system;

(2) Allow an affiliate to own or operate a broadband system on the electric utility's electric delivery system;

(3) Allow an unaffiliated entity to own or operate a broadband system on the electric utility's electric delivery system;

(4) Provide broadband service, including without limitation, Internet service over a broadband system; and

(5) Allow an affiliate or unaffiliated entity to provide broadband service, including without limitation, Internet service over a broadband system.

(b) The electric utility shall determine which broadband Internet service providers may have access to broadband capacity on the broadband system.

History. Acts 2007, No. 739, § 1.

23-18-805. Jurisdiction.

(a) Except as provided in this subchapter, neither the state nor any agency, instrumentality, or political subdivision of the state has jurisdiction over:

(1) An electric utility's ownership or operation of a broadband system; or

(2) The provision of broadband services by the electric utility, a broadband affiliate, or a broadband operator.

(b) Nothing in this subchapter shall interfere with the Arkansas Public Service Commission's authority to regulate public utilities pursuant to § 23-2-301 et seq.

History. Acts 2007, No. 739, § 1.

23-18-806. Fees and charges.

(a) An electric utility may charge a broadband affiliate, an unaffiliated broadband Internet service provider, or a broadband operator for the costs of the construction, installation, operation, and maintenance of the broadband system of the broadband affiliate, unaffiliated broadband Internet service provider, or broadband operator.

(b)(1) The costs incurred by an electric utility to own, operate, construct, and maintain a broadband system and to provide broadband services on its electric delivery system either by itself or through a broadband affiliate or broadband operator shall be allocated to the electric utility's accounts between regulated broadband services and nonregulated broadband services in accordance with applicable accounting principles and standards.

(2)(A) Costs allocated to nonregulated broadband services:

(i) Are outside the scope of an electric utility's providing of electric service to the public;

(ii) Shall not be recoverable through its rates for the providing of electric service; and

(iii) Are not subject to the jurisdiction of the state or any agency, instrumentality, or political subdivision of the state.

(B) Revenues received by an electric utility attributable to the providing of nonregulated broadband services shall not be included

as revenues to the electric utility for purposes of establishing its rates for the providing of electric service.

(c)(1) If all or part of a broadband system is installed on poles or other structures of a telephone utility and the broadband operator is unaffiliated with the electric utility that owns the electric delivery system, before installing equipment the unaffiliated broadband operator shall enter into the customary agreement used by the telephone utility for access to the electrical delivery system and shall pay the telephone utility an annual fee consistent with the usual and customary charges for access to the space occupied by that portion of the broadband system.

(2) If all or part of a broadband system is installed on poles or other structures of a telephone utility and the broadband operator is an electric utility or broadband affiliate, the existing contract governing placement of the electric utility's attachments on poles or other structures shall apply and no additional annual fee or approval shall be required if the broadband system is installed within the space allocated for electric service under the contract.

(d) An electric utility shall not:

(1) Charge an affiliate under this section an amount less than the electric utility would charge an unaffiliated entity for the same item or class of items; or

(2) Pay an affiliate under this section an amount more than the affiliate would charge an unaffiliated entity for the same item or class of items.

(e) A transaction between an electric utility and an affiliate and allocations between an electric utility account and a nonutility account with respect to broadband services and broadband systems are subject to this subchapter.

History. Acts 2007, No. 739, § 1.

23-18-807. Reliability of electric systems maintained.

(a) An electric utility that installs or operates or permits the installation or operation of a broadband system on its electric delivery system shall employ all reasonable measures to ensure that the operation of the broadband system does not interfere with or diminish the reliability of the electric utility's electric delivery system.

(b) If a disruption in the provision of electric service occurs, the electric utility shall be governed by the terms and conditions of the retail electric delivery service tariff.

(c) The provision of broadband services shall be at all times secondary to the reliable provision of electric delivery services.

History. Acts 2007, No. 739, § 1.

23-18-808. Compliance with federal law.

(a) A broadband operator shall comply with all applicable federal laws, including those protecting licensed spectrum users from interference by broadband systems.

(b) To the extent required by Federal Communications Commission rules, the operator of a radio frequency device shall discontinue using a radio frequency device that causes harmful interference.

History. Acts 2007, No. 739, §§ 1, 5.

Subchapter 9 — Arkansas Electric Utility Storm Recovery Securitization Act

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Effective Dates. Acts 2009, No. 729, § 6: Apr. 1, 2009. Emergency clause provided: "It is found and determined by the General Assembly that due to recent devastating ice storms in the state resulting in large storm recovery costs which could be securitized and financed under the provisions of this act, there is an immediate need to authorize the securitization financing for storm recovery costs, which may lower the financing costs or mitigate the impact on rates in comparison to traditional utility financing or other traditional utility recovery methods thereby benefitting customers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

23-18-901. Short title — Purpose.

(a) This subchapter shall be known and may be cited as the "Arkansas Electric Utility Storm Recovery Securitization Act".

(b) The purpose of this subchapter is to enable Arkansas electric utilities, if authorized by a financing order issued by the Arkansas Public Service Commission, to use securitization financing for storm recovery costs, which may lower the financing costs or mitigate the impact on rates in comparison with traditional utility financing or other traditional utility recovery methods thereby benefitting customers. The storm recovery bonds will not be public debt. The proceeds of the storm

recovery bonds shall be used for the purposes of recovering storm recovery costs solely as set forth in a financing order issued by the commission to encourage and facilitate the rebuilding of utility infrastructure damaged by storms. Securitization financings for storm recovery costs are hereby recognized to be a valid public purpose. Federal tax laws and revenue procedures expressly require that certain state legislation be enacted in order for such transactions to receive certain federal tax benefits. The General Assembly finds a public need to promote such securitization financings by providing clear and exclusive methods to create, transfer, and encumber interests in storm recovery property as defined in this subchapter. This need can be met by providing in this subchapter such methods and by establishing that any conflict between the rules governing sales, assignments, or transfers of, or security interests or other encumbrances of any nature upon intangible personal property under other Arkansas laws and the methods provided in this subchapter, including without limitation with regard to creation, perfection, priority, or enforcement, shall be resolved in favor of the rules and methods established in this subchapter with regard to storm recovery property.

(c) The intent of this subchapter is to provide benefits to Arkansas customers by allowing an Arkansas electric utility, if authorized by a financing order, to achieve certain tax and credit benefits of financing storm recovery costs on a similar basis with utilities in other states. This subchapter addresses certain property, security interests, and other matters to ensure that the financial, state income tax, state franchise tax, and federal income tax benefits of financing storm recovery costs through securitization are available in Arkansas. Financing orders issued under this subchapter shall not be considered as or deemed to be single issue ratemaking. The beneficial income tax and credit characteristics that may be achieved include the following:

(1) Treating the storm recovery bonds as debt of the electric utility for state and federal income tax purposes;

(2) Treating the storm recovery charges as gross income to the electric utility recognized under the utility's usual method of accounting for income taxes, rather than recognizing gross income upon the receipt of the financing order or the receipt of cash in exchange for the sale of the storm recovery property or the issuance of the storm recovery bonds;

(3) Avoiding the recognition of debt on the electric utility's balance sheet for certain credit and regulatory purposes by reason of the storm recovery bonds;

(4) Treating the sale, assignment, or transfer of the storm recovery property by the electric utility as a true sale for state law and bankruptcy purposes; and

(5) Avoiding any adverse impact of the financing on the electric utility's credit rating.

History. Acts 2009, No. 729, § 1.

23-18-902. Definitions.

As used in this subchapter:

(1) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with the issuance of storm recovery bonds;

(2) "Assignee" means any legal or commercial entity, including but not limited to, a corporation, statutory trust, limited liability company, partnership, limited partnership, or other legally recognized entity to which an electric utility sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property. The term also includes any legal or commercial entity to which an assignee sells, assigns, or transfers, other than as security, all or a portion of its interest in or right to storm recovery property;

(3) "Commission" means the Arkansas Public Service Commission;

(4) "Electric utility" means any person or any combination of persons, or lessees, trustees, and receivers of such person, now or hereafter owning or operating for compensation in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electricity to or for the public at retail in this state including an electric cooperative corporation generating or transmitting electricity;

(5) "Financing costs" means:

(A) Interest, discounts, and acquisition, defeasance, or redemption premiums that are payable on storm recovery bonds;

(B) Any payment required under an ancillary agreement and any amount required to fund or replenish reserve or other accounts or subaccounts established under the terms of any indenture, ancillary agreement, or other financing documents pertaining to storm recovery bonds;

(C) Any other cost related to issuing, supporting, repaying, and servicing storm recovery bonds, including, but not limited to, servicing fees, billing or other information system programming costs, accounting and auditing fees, trustee fees and expenses, legal fees and expenses, consulting fees and expenses, administrative fees and expenses, placement and underwriting fees and expenses, independent director and manager fees and expenses, capitalized interest, rating agency fees and expenses, stock exchange listing and compliance fees and expenses, and filing fees, including costs related to obtaining the financing order;

(D) Any income taxes and license or other fees imposed on the revenues generated from the collection of storm recovery charges or otherwise resulting from the collection of storm recovery charges, in any such case whether paid, payable, or accrued;

(E) Any gross receipts, franchise, use, and other taxes or similar charges including, but not limited to, regulatory assessment fees, in

any such case whether paid, payable, or accrued, imposed upon the electric utility, any assignee, or any financing party with respect to the receipt of storm recovery charges or the issuance of storm recovery bonds;

(F) Any other costs, charges, and amounts approved by the commission in a financing order;

(6) "Financing order" means an order of the commission adopted upon petition of an electric utility and pursuant to § 23-18-903 which, among other things, allows for:

(A) The issuance of storm recovery bonds;

(B) The imposition, collection, and periodic adjustments of storm recovery charges;

(C) The creation of storm recovery property; or

(D) The sale, assignment, or transfer of storm recovery property to an assignee;

(7) "Financing party" means any holder of storm recovery bonds and any trustee, collateral agent, or other person acting for the benefit of holders of storm recovery bonds;

(8) "Financing statement" has the same meaning as that provided in the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq.;

(9) "Secured party" means a financing party in favor of which an electric utility or its direct or indirect successors or assignees creates a security interest in all or any portion of its interest in or right to storm recovery property. A secured party may be granted a security interest in storm recovery property under this subchapter and a security interest in other collateral subject to the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., in one (1) security agreement;

(10) "Security interest" means a pledge, hypothecation, or other encumbrance of or other right over any portion of storm recovery property created by contract to secure the payment or performance of an obligation;

(11) "Storm" means, individually or collectively, a named tropical storm, a named hurricane, a tornado, an ice or snow storm, a flood, an earthquake or other significant weather event or a natural disaster that occurred during the calendar year 2009 or thereafter;

(12) "Storm recovery activity" means any activity or activities by or on behalf of an electric utility in connection with the restoration of service associated with electric power outages affecting customers of an electric utility as the result of a storm or storms, including, but not limited to, all internal and external labor costs and all costs related to mobilization, staging, and construction, reconstruction, replacement, or repair of electric generation, transmission, or distribution facilities;

(13) "Storm recovery bonds" means bonds, debentures, notes, certificates of beneficial interest, certificates of participation, certificates of ownership, or other evidences of indebtedness or ownership that are issued pursuant to or in connection with an indenture, contract, ancillary agreement, or other agreement of an electric utility or an

assignee pursuant to a financing order, the proceeds of which are used directly or indirectly to provide, recover, finance, or refinance commission-approved storm recovery costs, financing costs, and costs to replenish or fund a storm recovery reserve to such level as the commission may authorize in a financing order, and which are secured by or payable from storm recovery property. If certificates of beneficial interest, certificates of participation or ownership are issued, references in this subchapter to principal, interest, or premium shall be construed to refer to comparable amounts under those certificates;

(14) "Storm recovery charges" means the amounts authorized by the commission to recover, finance, or refinance storm recovery costs, financing costs, and the costs to create, fund, or replenish a storm recovery reserve, including, but not limited to, through the issuance and repayment of storm recovery bonds. Such charges shall be imposed on all customer bills and collected by an electric utility or its successors or assignees, or a collection agent. Such charges shall be nonbypassable charges that are separate and apart from the electric utility's base rates and shall be paid by all existing and future customers receiving transmission or distribution service, or both, from the electric utility or its successors or assignees under commission-approved rate schedules as provided in the financing order. An individual customer's monthly storm recovery charges shall be based upon the customer's then current monthly billing determinants;

(15) "Storm recovery costs" means, at the option and request of the electric utility and as approved by the commission pursuant to § 23-18-903 reasonable and necessary costs, including costs expensed, charged to self-insurance reserves, capitalized, or otherwise financed, that are incurred, including costs incurred prior to April 1, 2009, or expected to be incurred by an electric utility in undertaking a storm recovery activity. Such costs shall be net of applicable insurance proceeds and, where determined appropriate by the commission, shall include adjustments for normal capital replacement and operating costs, lost revenues, or other potential offsetting adjustments. Storm recovery costs shall include carrying costs, at simple interest which shall accrue at a rate equal to the electric public utility's last approved rate-base rate of return, from the date on which the storm recovery costs were incurred until the date that storm recovery bonds are issued or until storm recovery costs are otherwise recovered. Storm recovery costs shall also include the costs of retiring or purchasing any indebtedness or equity relating to or associated with storm recovery activities, including accrued interest, premium and other fees, costs, and charges related thereto. Storm recovery costs shall also include the costs to create or fund any storm recovery reserves or to replenish any shortfall in any storm recovery reserves;

(16) "Storm recovery property" means:

(A) All rights and interests of an electric utility or the direct or indirect successors or assignees of the electric utility under a financing order, including the right to impose, bill, collect, and receive storm

recovery charges authorized in the financing order and to obtain periodic adjustments to such charges as provided in the financing order; and

(B) All revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subdivision (16)(A) of this section, regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds;

(17) "Storm recovery reserve" means an electric utility's storm cost reserve account established pursuant to § 23-4-112; and

(18) "Uniform Commercial Code — Secured Transactions" means § 4-9-101 et seq.

History. Acts 2009, No. 729, § 1.

23-18-903. Financing orders.

(a) An electric utility may petition the Arkansas Public Service Commission for a financing order. For each petition, the electric utility shall:

(1) Describe the storm recovery activities that the electric utility has undertaken or proposes to undertake and describe the reasons for undertaking the activities;

(2) Set forth the known storm recovery costs and estimate the costs of any storm recovery activities that are not completed or for which the costs are not yet known as identified and requested by the electric utility;

(3) Set forth the level of the storm recovery reserve that the utility proposes to establish or replenish and has determined would be appropriate to recover through storm recovery bonds and is seeking to so recover and such level that the utility is funding or will seek to fund through other means, together with a description of the factors and calculations used in determining the amounts and methods of recovery;

(4) Indicate whether the electric utility proposes to finance all or a portion of the storm recovery costs and storm recovery reserve using storm recovery bonds. If the electric utility proposes to finance a portion of such costs, the electric utility shall identify that portion in the petition;

(5) Estimate the financing costs related to the storm recovery bonds;

(6) Estimate the storm recovery charges necessary to pay in full as scheduled the principal of, premium, if any, and interest on the proposed storm recovery bonds and related financing costs until the legal final maturity date of such proposed storm recovery bonds;

(7) Estimate any cost savings from or demonstrate how rate impacts to customers would be mitigated as a result of financing storm recovery costs with storm recovery bonds in comparison with traditional utility financing or other traditional utility recovery methods;

(8) File with the petition direct testimony supporting the petition; and

(9) Facilitate a timely audit of all capital costs included within the storm recovery costs proposed to be financed by storm recovery bonds.

(b)(1)(A) Proceedings on a petition submitted pursuant to subsection (a) of this section shall begin with a petition by an electric utility and shall be disposed of in accordance with the commission's rules and regulations promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except that the provisions of this section, to the extent applicable, shall control.

(B) Within 7 days after the filing of a petition, the commission shall publish a case schedule, which schedule shall place the matter before the commission on an agenda that will permit a commission decision no later than one hundred twenty (120) days after the date the petition is filed.

(C) No later than one hundred thirty-five (135) days after the date the petition is filed, the commission shall issue a financing order or an order rejecting the petition. The commission shall issue a financing order authorizing financing of reasonable and prudent storm recovery costs, the storm recovery reserve amount determined appropriate by the commission, and financing costs if the commission finds that the issuance of the storm recovery bonds and the imposition of storm recovery charges authorized by the order are reasonably expected to result in lower overall costs or to mitigate rate impacts to customers as compared with traditional utility financing or other traditional utility recovery methods. Any determination of whether storm recovery costs are reasonable and prudent shall be made with reference to the general public interest in and the scope of effort required to provide the safe and expeditious restoration of electric service.

(2) In a financing order issued to an electric utility, the commission shall:

(A) Specify the amount of storm recovery costs and the level of storm recovery reserves, taking into consideration, to the extent the commission deems appropriate, any other methods used to recover these costs, and describe and estimate the amount of financing costs which may be recovered through storm recovery charges, and specify the period over which such costs may be recovered;

(B) Determine that the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in lower overall costs or would mitigate rate impacts to customers as compared with traditional utility financing or other traditional utility recovery methods;

(C) Provide that, for the period specified pursuant to subdivision (b)(2)(A) of this section, the imposition and collection of storm recovery charges authorized in the financing order shall be nonbypassable and paid by all customers receiving transmission or distribution service, or both, from an electric utility or its successors or assignees under commission-approved rate schedules as provided in

the financing order. An individual customer's monthly storm recovery charges shall be based upon the customer's then-current monthly billing determinants;

(D) Determine what portion, if any, of the storm recovery reserves must be held in a funded reserve and any limitations on how the reserve may be held, accessed, or used;

(E) Include a formula-based mechanism for making expeditious periodic adjustments in the storm recovery charges that customers are required to pay under the financing order and for making any adjustments that are necessary to correct for any projected overcollection or undercollection of the charges or to otherwise ensure the timely payment as scheduled of storm recovery bonds and financing costs and other required amounts and charges payable in connection with the storm recovery bonds;

(F) Specify the storm recovery property that is or shall be created in favor of an electric utility or its successors or assignees and that shall be used to pay or secure storm recovery bonds and financing costs;

(G) Specify the degree of flexibility to be afforded to the electric utility in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, interest rates, and other financing costs;

(H) Provide the method by which storm recovery charges shall be allocated among the customer classes;

(I) Provide that after the final terms of an issuance of storm recovery bonds have been established and prior to the issuance of storm recovery bonds, the electric utility shall determine the resulting initial storm recovery charge in accordance with the financing order and such initial storm recovery charge shall be final and effective upon the issuance of such storm recovery bonds without further commission action;

(J) Include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this section.

(c) After the issuance of a financing order, the electric utility retains sole discretion regarding whether to cause the storm recovery bonds to be issued, including the right to defer or postpone such sale, assignment, transfer, or issuance, provided that the storm recovery bonds, other than refunding bonds, may not be issued later than two (2) years from the date the financing order becomes final and nonappealable, or such later date as provided in the financing order, and provided further, that nothing herein shall prevent the electric utility, prior to the end of such two-year period, from abandoning the issuance of storm recovery bonds under the financing order, if this is in the best interest of ratepayers, by filing with the commission a statement of abandonment and the reasons therefore. Nothing herein limited the rights of the electric utility to recover its storm recovery costs under normal ratemaking should the storm recovery bonds not be issued.

(d) At the request of an electric utility, the commission may commence a proceeding and issue a subsequent financing order that

provides for the refinancing, retiring, or refunding of storm recovery bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in subsection (b) of this section. Effective on retirement of the refunded storm recovery bonds and the issuance of new storm recovery bonds, the commission may adjust the related storm recovery charges accordingly or establish substitute storm recovery charges. Any such financing order shall be issued within one hundred twenty (120) days of the application of an electric utility therefor.

(e) All financing orders by the commission shall be operative and in full force and effect from the date of issuance by the commission.

(f) An aggrieved party or intervenor may within fifteen (15) days after the financing order or a supplemental order made by the commission becomes effective, or within fifteen (15) days from the date an application for rehearing is deemed to be denied as provided in § 23-2-422, file in the Court of Appeals, a petition setting forth the particular cause of objection to the order complained of. Inasmuch as delay in the determination of the appeal of a financing order may delay the issuance of storm recovery bonds thereby diminishing savings to customers which might be achieved if such bonds were issued as contemplated by a financing order, all such cases shall be given precedence over all other civil cases in the court and shall be heard and determined as speedily as possible.

(g) A financing order issued to an electric utility may provide that creation of the electric utility's storm recovery property pursuant to subdivision (b)(2)(F) of this section is conditioned upon, and shall be simultaneous with, the sale or other transfer of the storm recovery property to an assignee and the pledge of the storm recovery property to secure storm recovery bonds.

(h) If the commission issues a financing order, the electric utility shall file with the commission at least annually a request for administrative approval applying the formula-based true-up mechanism to make the adjustments described in subdivision (b)(2)(E) of this section. The review of such a request shall be limited to determining whether there is any mathematical error in the application of the formula-based mechanism relating to the appropriate amount of any projected overcollection or undercollection of storm recovery charges and the amount of an adjustment. Such adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm recovery bonds approved under the financing order. Within fifteen (15) days after receiving an electric utility's request pursuant to this subsection, the commission shall either administratively approve the request or inform the electric utility of any mathematical errors in its calculation. If the commission informs the utility of mathematical errors in its calculation, the utility may correct its error and refile its request. The time frames previously described in this subsection shall apply to a refiled request.

(i) Subsequent to the earlier of the transfer of storm recovery property to an assignee or the issuance of storm recovery bonds authorized thereby, a financing order is irrevocable, and except as provided in subsections (d) and (h) of this section, the commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust storm recovery charges approved in the financing order.

History. Acts 2009, No. 729, § 1.

23-18-904. Exceptions to commission jurisdiction.

(a) If the Arkansas Public Service Commission issues a financing order to an electric utility pursuant to this section, the commission may not, in exercising its powers and carrying out its duties regarding any matter within its authority pursuant to this chapter, consider the storm recovery bonds issued pursuant to the financing order to be the debt of the electric utility other than for federal and state income tax purposes, consider the storm recovery charges paid under the financing order to be the revenue of the electric utility for any purpose, or consider the storm recovery costs or financing costs specified in the financing order to be the costs of the electric utility, nor may the commission determine any action taken by an electric utility which is consistent with the financing order to be unjust or unreasonable.

(b) The commission may not order or otherwise directly or indirectly require an electric utility to use storm recovery bonds to finance any project, addition, plant, facility, extension, capital improvement, equipment, or any other expenditure. The commission may not refuse to allow an electric utility to recover costs for storm recovery activities in an otherwise permissible and reasonable fashion, or refuse or condition authorization or approval of the issuance and sale by an electric utility of securities or the assumption by it of liabilities or obligations, solely because of the potential availability of storm recovery financing.

History. Acts 2009, No. 729, § 1.

23-18-905. Storm recovery property.

(a) All storm recovery property that is specified in a financing order shall constitute an existing, present intangible property right or interest therein, notwithstanding that the imposition and collection of storm recovery charges depend on the electric utility to which the financing order is issued performing its servicing functions relating to the collection of storm recovery charges and on future electricity consumption. Such property shall exist whether or not the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is or may be dependent on the future provision of service to customers by the electric utility or its successors or assignees and the future consumption by customers of electricity.

(b) Storm recovery property specified in a financing order shall continue to exist until the storm recovery bonds issued pursuant to the financing order are indefeasibly paid in full and all financing costs of the bonds have been paid in full.

(c) All or any portion of storm recovery property specified in a financing order issued to an electric utility, if storm recovery bonds are to be issued, shall be sold, assigned, or transferred to a successor or an assignee, including an affiliate or affiliates of the electric utility created for the limited purpose of acquiring, owning, or administering storm recovery property or issuing storm recovery bonds under the financing order. All or any portion of storm recovery property may be encumbered by a security interest to secure storm recovery bonds issued pursuant to the financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Each such sale, assignment, transfer, conveyance, or pledge made by or security interest granted by an electric utility or affiliate of an electric utility or assignee is considered to be a transaction in the ordinary course of business.

(d) The description of storm recovery property being sold, assigned, or transferred to an assignee in any sale agreement, purchase agreement, or other transfer agreement, being encumbered, granted, or pledged to a secured party in any security agreement, pledge agreement, or other security document, or indicated in any financing statement is only sufficient if such description or indication refers to the specific financing order that created the storm recovery property and states that such agreement or financing statement covers all or part of such storm recovery property described in such financing order. A description of storm recovery property in a financing statement shall be sufficient if it refers to the financing order creating the storm recovery property. This subsection applies to all purported sales, assignments, or transfers of and all purported grants of liens or security interests in storm recovery property, regardless of whether the related sale agreement, purchase agreement, other transfer agreement, security agreement, pledge agreement, or other security document was entered into, or any financing statement was filed, before or after April 1, 2009.

(e) If an electric utility defaults on any required payment of charges arising from storm recovery property specified in a financing order, the court specified in § 23-18-903(f) upon application by an interested party and without limiting any other remedies available to the applying party shall order the sequestration and payment of the revenues arising from the storm recovery property to the financing parties or their representatives. Any such order shall remain in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assigns.

(f) The interest of a transferee, purchaser, acquirer, assignee, or secured party in storm recovery property specified in a financing order is not subject to setoff, counterclaim, surcharge, or defense by the

electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility, its successors or assignees or any other entity.

(g) Any successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under a financing order as the electric utility under the financing order in the same manner and to the same extent as the electric utility, including collecting and paying to the person entitled to receive them, the revenues, collections, payments, or proceeds of the storm recovery property.

(h) Storm recovery bonds shall be nonrecourse to the credit or any assets of the electric utility other than the storm recovery property as specified in the financing order and any rights under any ancillary agreement.

History. Acts 2009, No. 729, § 1.

23-18-906. Sale.

The sale, assignment, or transfer of storm recovery property is governed by this section. All of the following apply to a sale, assignment, or transfer under this section:

(1) The sale, conveyance, assignment, or other transfer of storm recovery property by an electric utility to an assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer is an absolute transfer and true sale of, and not a pledge of or security interest in, the transferor's right, title, and interest in, to and under the storm recovery property, other than for federal and state income tax purposes. For all purposes other than federal and state income tax purposes, the parties' characterization of a transaction as a sale of an interest in storm recovery property shall be conclusive that the transaction is a true sale and that ownership has passed to the party characterized as the purchaser, regardless of whether the purchaser has possession of any documents evidencing or pertaining to the interest. After such a transaction, the storm recovery property is not subject to any claims of the transferor or the transferor's creditors, other than creditors holding a prior security interest in the storm recovery property perfected under subdivision (4) of this section;

(2) The characterization of the sale, conveyance, assignment, or other transfer as a true sale or other absolute transfer under subdivision (1) of this section and the corresponding characterization of the assignee's property interest is not affected by:

(A) Commingling of amounts arising with respect to the storm recovery property with other amounts;

(B) The retention by the transferor of a partial or residual interest, including an equity interest or entitlement to any surplus, in the

storm recovery property, whether direct or indirect, or whether subordinate or otherwise;

(C) Any recourse that the assignee may have against the transferor, except that any such recourse shall not be created, contingent upon, or otherwise occurring or resulting from the inability or failure of one (1) or more of the transferor's customers to timely pay all or a portion of the storm recovery charge;

(D) Any indemnifications, obligations, or repurchase rights made or provided by the transferor, except that such indemnity or repurchase rights shall not be based solely upon the inability or failure of a transferor's customers to timely pay all or a portion of the storm recovery charge;

(E) The transferor acting as the collector of the storm recovery charges or the existence of any contract that authorizes or requires the electric utility, to the extent that any interest in storm recovery property is sold or assigned, to contract with the assignee or any financing party that it will continue to operate its system to provide service to its customers, will collect amounts in respect of the storm recovery charges for the benefit and account of such assignee or financing party, and will account for and remit such amounts to or for the account of such assignee or financing party, including pursuant to a sequestration order authorized by this subchapter;

(F) The contrary or other treatment of the sale, conveyance, assignment, or other transfer for tax, financial reporting, or other purposes;

(G) The granting or providing to holders of the storm recovery bonds of a preferred right to the storm recovery property or credit enhancement by the electric utility or its affiliates with respect to the storm recovery bonds;

(H) The status of the assignee as a direct or indirect wholly owned subsidiary or other affiliate of the electric utility. The separate identity of any assignee of storm recovery property which is a subsidiary or affiliate of the electric utility shall not be disregarded due to the fact that the assignee and the electric utility share any one (1) or more incidents of control, including common managers, officers, directors, members, accounting or administrative systems, consolidated tax returns, or office space, that the assignee may be a disregarded entity for tax purposes, that the utility caused the formation of the assignee, that a contract by the utility and the assignee described in subdivision (2)(E) of this section exists, that the assignee has no other business other than pertaining to the storm recovery property, that the capitalization of the assignee is limited to amounts required for compliance with certain applicable federal income tax laws and revenue procedures, or that other factors used in applying a single business enterprise test to juridical persons are present;

(3) Any right that an electric utility has in the storm recovery property prior to its pledge, sale, or transfer or any other right of an

electric utility created under this subchapter or created in the financing order and assignable under this section or assignable pursuant to a financing order shall be property in the form of a contract right. Transfer of an interest in storm recovery property to an assignee is enforceable only upon the later of the issuance of a financing order, the execution and delivery of transfer documents to the assignee in connection with the issuance of storm recovery bonds, and the receipt of value. An enforceable transfer of an interest in storm recovery property to an assignee other than a security interest shall be perfected against all third parties, including subsequent judicial or other lien creditors, when a notice of that transfer has been given by the filing of a financing statement in accordance with subdivision (4) of this section. The transfer shall be perfected against third parties as of the date of filing;

(4) Except as otherwise provided in this subchapter, financing statements required to be filed under this section shall be filed, indexed, and maintained in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq. The filing of such a financing statement with the Secretary of State shall be the only method of perfecting a sale, assignment, or transfer of storm recovery property. The sale, assignment, or transfer of an interest in storm recovery property perfected by filing a financing statement is effective against the customers owing payment of the storm recovery charges, creditors of the transferor, subsequent transferees, and all other third persons notwithstanding the absence of actual knowledge of or notice to the customers of the sale, assignment, or transfer. No continuation statement need be filed to maintain such perfection;

(5) The priority of the conflicting ownership interests of assignees in the same interest or rights in any storm recovery property is determined as follows:

(A) Conflicting perfected interests or rights of assignees rank according to priority in time of perfection;

(B) A perfected interest or right of an assignee has priority over a conflicting unperfected interest or right of an assignee; and

(C) A perfected interest or right of an assignee has priority over a person who becomes a lien creditor after the perfection of such assignee's interest or right; and

(6) The priority of a sale, assignment, or transfer perfected under this section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to those funds, other than a security interest perfected under § 23-18-907 shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that property shall be held for and delivered to the assignee or financing party by any collector as a fiduciary.

History. Acts 2009, No. 729, § 1.

23-18-907. Security interests.

(a) The Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., does not apply to storm recovery property or any right, title, or interest of a utility, assignee, or financing party therein except to the extent specified in this subchapter. In addition, such right, title, or interest pertaining to a financing order including, but not limited to, the associated storm recovery property including any revenues, collections, claims, rights to payment, payments, money, or proceeds of or arising from storm recovery charges pursuant to such order, shall not be deemed proceeds of any right or interest other than of the financing order and the storm recovery property arising from the financing order. All revenues and collections resulting from storm recovery property shall constitute proceeds only of the storm recovery property arising from the financing order.

(b) Except to the extent provided in this subchapter with respect to filings of financing statements or control of deposit accounts or investment property as original collateral, the creation, attachment, granting, perfection, and priority of security interests in storm recovery property to secure storm recovery bonds is governed solely by this subchapter and not by the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq.

(c)(1) A security interest in storm recovery property is valid and enforceable against the electric utility and its successor or an assignee and third parties and attaches to storm recovery property only after all of the following conditions are met:

(A) The issuance of a financing order;

(B) The execution and delivery of a security agreement, indenture, or other agreement with a financing party relating to the granting of a security interest in connection with the issuance of storm recovery bonds; and

(C) The receipt of value for the storm recovery bonds.

(2) A security interest attaches to storm recovery property when all of the foregoing conditions have been met, unless the security agreement expressly postpones the time of attachment.

(d) A security interest in storm recovery property is perfected when it has attached and when the applicable financing statement describing the storm recovery property as provided in § 23-18-905(d) has been filed with the Secretary of State. The interest of a secured party is not perfected unless a financing statement sufficient under this subchapter and otherwise in accordance with the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., is filed, and after perfection the secured party's interest continues in the storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced; provided however that a security interest granted by the issuer of and securing storm recovery bonds

held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of storm recovery property are deposited or credited may be perfected by control as provided in subsection (e) of this section. A security interest in proceeds of storm recovery property is a perfected security interest if the security interest in the storm recovery property was perfected under this subchapter. Except as otherwise provided in this subchapter, financing statements required to be filed pursuant to this section shall be filed, indexed, and maintained in the same manner and in the same system of records maintained for the filing of financing statements under the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq. The filing of such a financing statement shall be the only method of perfecting a lien or security interest on storm recovery property except as provided in this subsection. No continuation statement need be filed to maintain such perfection.

(e) A perfected security interest in storm recovery property and all proceeds of such storm recovery property, whether or not billed, accrued, or collected, and whether or not deposited into a deposit account and however evidenced, shall have priority over a conflicting lien of any nature in the same collateral property, except a security interest is subordinate to the rights of a person that becomes a lien creditor before the perfection of such security interest. A security interest in storm recovery property which qualifies for priority over a conflicting security interest or lien also has priority over the conflicting security interest or lien in proceeds of the storm recovery property. The relative priority of a perfected security interest of a secured party is not adversely affected by any lien or security interest in a deposit account of the electric utility that is a collector and into which the revenues are deposited. The priority of a security interest perfected under this section is not defeated or impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest, other than a prior security interest perfected under this subchapter, that may apply to those funds shall be terminated as to all funds transferred to a segregated account for the benefit of an assignee or a financing party or to an assignee or financing party directly. The perfection by control, the effect of perfection by control, and the priority of a security interest granted by the issuer of and securing storm recovery bonds held by a secured party having control of a segregated deposit account or securities account as original collateral into which revenues, collections, or proceeds of storm recovery property are deposited or credited shall be governed by the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., including the choice of law rules in §§ 4-9-301 — 4-9-307.

(f) If a default or termination occurs under the terms of the storm recovery bonds, the secured party may foreclose on or otherwise enforce the security interest in any storm recovery property as if it were a secured party under the Uniform Commercial Code — Secured Trans-

actions, § 4-9-101 et seq. A secured party holding a security interest in storm recovery property shall be entitled to exercise all of the same rights and remedies as are available to a secured party under the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., to the same extent as if those rights and remedies were set forth in this subchapter. A court may order that amounts arising from storm recovery property be transferred to a separate account of the secured party for the financing parties' benefit, to which their security interest shall apply. On application by or on behalf of a secured party to the court of this state specified in subsection (f) of this section, such court shall order the sequestration and payment to the financing parties of revenues arising from the storm recovery property.

(g) A security interest created under this subchapter may provide for a security interest in after-acquired collateral. A security interest granted under this subchapter is not invalid or fraudulent against creditors solely because the grantor or the electric utility as collector or servicer has the right or ability to commingle the collateral or proceeds, or collect, compromise, enforce, and otherwise deal with collateral.

(h) Any action arising under the provisions of this subchapter to enforce a security interest in any security interest governed by this subchapter or in any storm recovery property, or which otherwise asserts an interest in, or a right in, to, or against any storm recovery property, wherever located or deemed located, shall be brought in the Pulaski County Circuit Court.

(i) The priority of the conflicting interests of secured parties in the same interest or rights in any storm recovery property is determined as follows:

(1) Conflicting perfected interests or rights of secured parties rank according to priority in time of perfection. Priority dates from the time a filing covering the interest or right is made in accordance with this section and the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq.;

(2) A perfected interest or right of a secured party has priority over a conflicting unperfected interest or right of an assignee; and

(3) A perfected interest or right of a secured party has priority over a person who becomes a lien creditor after the perfection of such secured party's interest or right.

(j) The priority of a lien and security interest in storm recovery property perfected under this section is not impaired by any later modification of the financing order or storm recovery property or by the commingling of funds arising from storm recovery property with other funds. Any other security interest that may apply to the storm recovery property shall be terminated when those funds are transferred to a segregated account for the assignee or a financing party. If storm recovery property has been transferred to an assignee or financing party, any proceeds of that storm recovery property shall be held in trust for the assignee or financing party.

History. Acts 2009, No. 729, § 1.

23-18-908. Choice of law — Conflicts.

(a) The law governing the validity, enforceability, attachment, perfection, priority, exercise of remedies, and venue with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any storm recovery property shall be exclusively the laws of this state, without applying this state's law on conflicts of laws and notwithstanding any contrary contractual provision. The validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to the sale, assignment, or transfer of an interest or right or the creation of a security interest in any storm recovery property shall be governed by this subchapter, and solely to the extent not addressed by this subchapter, by the Uniform Commercial Code — Secured Transactions, § 4-9-101 et seq., and other laws of this state.

(b) In the event of conflict between this subchapter and any other law regarding the attachment, creation, perfection, the effect of perfection, or priority of, and sale, assignment, or transfer of, or security interest in, storm recovery property, or the exercise of remedies with respect thereto, this subchapter shall govern to the extent of the conflict.

History. Acts 2009, No. 729, § 1.

23-18-909. Storm recovery bonds not public debt — Legal investments.

(a) Storm recovery bonds are not a debt or a general obligation of the state or any of its political subdivisions, agencies, or instrumentalities and are not a charge on their full faith and credit. An issue of storm recovery bonds does not, directly or indirectly or contingently, obligate the state or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the bonds, other than for paying storm recovery charges in their capacity as consumers of electricity. All storm recovery bonds authorized by a financing order by the Arkansas Public Service Commission must contain on the face thereof a statement to the following effect:
"Neither the full faith and credit nor the taxing power of the State of Arkansas is pledged to the payment of the principal of, or interest on, this bond."

(b) Storm recovery bonds shall be legal investments for all governmental units, financial institutions, insurance companies, fiduciaries, and other persons that require statutory authority regarding legal investment.

History. Acts 2009, No. 729, § 1.

23-18-910. Tax treatment.

The Arkansas state income tax treatment of the following events will conform to the federal income tax treatment of such events:

(1) The electric utility's receipt of a financing order that creates storm recovery property for the benefit of the electric utility;

(2) The electric utility's receipt of cash or other valuable consideration in exchange for its transfer of the storm recovery property to an affiliate which is wholly owned, directly or indirectly, by the electric utility; and

(3) The electric utility's receipt of cash or other valuable consideration in exchange for storm recovery bonds issued by the financing party.

History. Acts 2009, No. 729, § 1.

23-18-911. State pledge.

(a) For purposes of this subsection, the term "bondholder" means a person who holds, owns, or is the beneficial holder or owner of a storm recovery bond.

(b) The state and its agencies, including the Arkansas Public Service Commission, pledge to and agree with bondholders, the owners of the storm recovery property, and other financing parties that the state will not:

(1) Alter the provisions of this section which make the storm recovery charges imposed by a financing order irrevocable, binding, and nonbypassable charges;

(2) Take or permit any action that impairs or would impair the value of storm recovery property; or

(3) Except as allowed under this section, reduce, alter, or impair storm recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed in connection with the related storm recovery bonds have been paid and performed in full.

Nothing in this paragraph shall preclude limitation or alteration if full compensation is made by law for the full protection of the storm recovery charges collected pursuant to a financing order and of the holders of storm recovery bonds and any assignee or financing party entering into a contract with the electric utility.

(c) Any person or entity that issues storm recovery bonds may include the pledge specified in subsection (b) of this section in the bonds and related documentation.

History. Acts 2009, No. 729, § 1.

23-18-912. Assignee or financing party not an electric utility.

An assignee or financing party shall not be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in this subchapter.

History. Acts 2009, No. 729, § 1.

CHAPTER 19

ELECTRIC CONSUMER CHOICE ACT OF 1999

SECTION.
23-19-101 — 23-19-616. [Repealed.]

Publisher's Notes. Acts 2003, No. 204, § 16, provided: "Nothing in this act shall alter or diminish the Arkansas Public Service Commission's authority under otherwise applicable law."

Effective Dates. Acts 2003, No. 204, § 19: Feb. 21, 2003. Emergency clause provided: "It is found and determined by the Eighty-fourth General Assembly that certain provisions of the Electric Consumer Choice Act of 1999, as amended by Act 324 of 2001, for the implementation of retail electric competition may take effect prior to ninety-one (91) days after the adjournment of this session; that this act is intended to prevent such implementation; and that unless this emergency clause is adopted, this act may not go into effect until further steps have been taken toward retail electric competition, which the General Assembly has found not to be in the public interest. The General Assembly further finds that uncertainty surrounding the implementation of the Electric Consumer Choice Act during the ninety (90) days following the adjournment of this session and uncertainty regarding the recovery of reasonable generation costs, could discourage electric utilities from acquiring additional generation resources; that retail electric customers will require such resources; and that this act, in Section 11 and elsewhere, provides procedures to facilitate the acquisition of these resources. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-19-101 — 23-19-616. [Repealed.]

Publisher's Notes. This chapter was repealed by Acts 2003, No. 204, § 18. The chapter was derived from the following sources:

23-19-101. Acts 1999, No. 1556, § 1; 2001, No. 324, § 11.
23-19-102. Acts 1999, No. 1556, § 1.
23-19-103. Acts 1999, No. 1556, § 1; 2001, No. 324, § 12.
23-19-104. Acts 1999, No. 1556, § 1.
23-19-105. Acts 1999, No. 1556, § 1.
23-19-106. Acts 1999, No. 1556, § 1.
23-19-107. Acts 1999, No. 1556, § 1; 2001, No. 324, §§ 13, 14.
23-19-108. Acts 1999, No. 1556, § 1.
23-19-109. Acts 1999, No. 1556, § 20.
23-19-201. Acts 1999, No. 1556, § 1.
23-19-202. Acts 1999, No. 1556, § 1.
23-19-203. Acts 1999, No. 1556, § 1.
23-19-204. Acts 1999, No. 1556, § 1.
23-19-205. Acts 1999, No. 1556, § 1; 2001, No. 324, § 15.

23-19-301. Acts 1999, No. 1556, § 1; 2001, No. 324, § 16.
23-19-302. Acts 1999, No. 1556, § 1.
23-19-303. Acts 1999, No. 1556, § 1.
23-19-304. Acts 1999, No. 1556, § 1.
23-19-401. Acts 1999, No. 1556, § 1.
23-19-402. Acts 1999, No. 1556, § 1; 2001, No. 324, § 17.
23-19-403. Acts 1999, No. 1556, § 1.
23-19-404. Acts 1999, No. 1556, § 1; 2001, No. 324, §§ 18, 19.
23-19-501. Acts 1999, No. 1556, § 1.
23-19-502. Acts 1999, No. 1556, § 1.
23-19-601. Acts 1999, No. 1556, § 1.
23-19-602. Acts 1999, No. 1556, § 1.
23-19-603. Acts 1999, No. 1556, § 1.
23-19-604. Acts 1999, No. 1556, § 1.
23-19-605. Acts 1999, No. 1556, § 1.
23-19-606. Acts 1999, No. 1556, § 1.
23-19-607. Acts 1999, No. 1556, § 1.
23-19-608. Acts 1999, No. 1556, § 1.
23-19-609. Acts 1999, No. 1556, § 1.
23-19-610. Acts 1999, No. 1556, § 1.
23-19-611. Acts 1999, No. 1556, § 1.
23-19-612. Acts 1999, No. 1556, § 1.
23-19-613. Acts 1999, No. 1556, § 1.
23-19-614. Acts 1999, No. 1556, § 1.
23-19-615. Acts 1999, No. 1556, § 1.
23-19-616. Acts 1999, No. 1556, § 1.

This note is being set out to reflect a correction of the repealing act information.